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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

UNITED STATES	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.
	)	
LARRY A. BAXTER; ANITA DAWKINS; and	)	
BAXTER AND ASSOCIATES OFFICE	)	
OF ACCOUNTANCY, P.C.,	)	
	)	
	)	
Defendants.	)	

Complaint and Request for Injunctive Relief

Plaintiff United States of America, for its complaint against defendants Larry A. Baxter; Anita Dawkins; and Baxter and Associates Office of Accountancy, P.C., states as follows:

Jurisdiction and Venue

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. This suit is brought under 26 U.S.C. §§ 7402, 7407, and 7408 to restrain and enjoin defendants from:

a. preparing federal income tax returns, amended returns, and other related documents and forms for others;

b. engaging in any activity subject to penalty under 26 U.S.C. § 6694, 6695, or 6701;

c. engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws; and

d. assisting in the preparation of federal tax returns that defendants know will result in the understatement of any tax liability .

3. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General under 26 U.S.C. §§ 7402, 7407, and 7408.

4. Baxter owns and operates Baxter & Associates Office of Accountancy, P.C. ("Associates') at 1838 Montgomery Highway, Suite 1, Dothan, Alabama. Dawkins resides at 6225 Walden Drive, Apartment 123, Dothan, Alabama. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396.

Baxter and Dawkins's Earned Income Tax Credit Scheme

5. Baxter is the sole-shareholder and president of Associates, which prepares federal tax returns at offices located in Jacksonville, Florida, and Dothan, Alabama.

6. Dawkins, a former Associates employee, prepared federal income tax returns for Associates customers during 2004.

7. As president of Associates, Baxter personally prepared and caused others in his employ, including Dawkins, to prepare federal income tax returns containing false information in order to fabricate higher tax refunds for customers based on overstated earned income tax credits (EITC). The EITC is a refundable federal income tax credit for low-income working individuals and families. Congress originally approved the tax credit legislation in 1975 in part to offset the burden of social security taxes and to provide an incentive to work. When the EITC exceeds the amount of taxes owed, it results in a tax refund to those who claim and qualify for the credit.

8. Because of the way the EITC works, in some instances increases in reported income can lead (counterintuitively) to larger tax refunds after taking the EITC into account. As part of their tax scam, the defendants prepared federal income tax returns for customers reporting

fictitious business profits in amounts calculated to result in increased claimed tax refunds based on the EITC.

9. As part of this scheme, defendants prepared federal income tax returns for some customers falsely claiming that the customers—who did not have businesses—were engaged in businesses, in order to create a false business profit to maximize refunds based on the EITC.

10. For example, Associates prepared the 2003 federal individual income tax return for a Verbana, Alabama customer, falsely reporting that she had a daycare business in order to maximize her claim for an EITC refund. On the return's Schedule C, Associates falsely reported $5,000 in gross receipts from a "Child Daycare" business. As a direct result of Associates' false reporting of self-employment income, this customer received a refund of $2,324. If Associates had correctly reported that the customer had no self-employment income, the customer would have received a refund of $1,171.

11. In another example, Associates prepared the 2003 federal income tax return for a Dothan, Alabama customer, falsely reporting that she had a daycare business in order to maximize her claim for an EITC refund. On the return's Schedule C, Associates falsely reported $5,000 in gross receipts from a "Child Daycare" business. Baxter told this customer she could report self-employment income on her return because the IRS would not detect this false information. Baxter also told this customer that she would receive a larger refund if she reported self-employment income. As a direct result of Associates' false reporting of self-employment income, this customer received a refund of $2,295. If Associates had correctly reported that the customer had no self-employment income, the customer would have received a refund of $1,421.

12. As part of this scheme, defendants prepared returns for some customers that did not report business expenses on Schedule C in order to inflate business profits to maximize refunds based on the EITC.

13. For example, Associates prepared the 2002 federal individual income tax return for a self-employed hairdresser in Dothan, Alabama. Associates, however, falsely reported no business expenses on this customer's 2002 return. Because Associates did not report any business expenses on this customer's 2002 return, her income was increased for EITC purposes, resulting in a refund of $1,312. If Associates had properly reported this customer's 2002 business expenses, this customer would not have received any refund for 2002.

14. As part of this scheme, the defendants prepared federal income tax returns for customers reporting incorrect filing statuses in order to maximize the customers' tax refunds based on the EITC.

15. As part of this scheme, the defendants prepared federal income tax returns reporting false dependency exemptions in order to maximize their customers' refunds based on the EITC.

16. In the past, Baxter paid another person to obtain an Electronic Filing Number from the IRS and to sign federal income tax returns prepared by Baxter.

17. Baxter and Dawkins had a financial incentive to prepare federal income tax returns containing false information because they tied return-preparation fees directly to the amount of tax refund that customers received.

18. While the defendants' preparation of federal income tax returns containing fictitious business profits nominally increases their customers' reported federal income tax liability, this

nominal income tax increase is more than offset by the additional EITC refund their customers receive.

19. Of the thousands of federal tax returns the defendants have prepared for customers since 2000, virtually all have claimed tax refunds, and the majority of these returns included claims for the EITC.

20. The IRS recently listed unscrupulous return preparers and false Earned Income Tax Credit claims as part of its 2004 "Dirty Dozen" tax scams. The "Dirty Dozen" list can be found on the web at www.irs.gov/newsroom/article/0,,id=120803,00.html.

21. Baxter and Dawkins knew that the federal income tax returns they prepared contained unrealistic positions and false information designed to claim improper Earned Income Tax Credits.

Harm to the Government

22. The IRS has identified 1,700 federal income tax returns prepared by defendants for the 2000 through 2003 tax years. The IRS has thus far looked at 60 of these returns, and examined 27 of them completely. All 27 of the completely examined returns reported falsely high profit amounts to increase customers' EITC refunds. The defendants' customers received approximately $39,878 in improper refunds, for an average loss of $1,400 per return. The IRS has not fully examined the other 33 of the 60 returns, but has ascertained from examining amounts reported on them a pattern of reporting business income but no expenses that is consistent with the inflated business income on the other 27 that results in inflated EITC.

23. The harm to the Government will increase if the defendants are not stopped because

the 2004 return-filing season has begun and defendants have not ceased preparing federal income tax returns based on their scheme.

Count I

Injunction under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701

24. The United States incorporates by reference the allegations in paragraphs 1 through 23.

25. Section 7408 of 26 U.S.C. authorizes a court to enjoin persons who have engaged in conduct subject to penalty under 26 U.S.C. § 6701 from engaging in further such conduct. Section 6701 imposes a penalty on any person who aids in the preparation of any portion of a return or other document, who knows the portion or document will be used in connection with any material matter under the internal revenue laws, and who knows the portion or document (if so used) would result in understating another person's tax liability.

26. The defendants have prepared tax returns and assisted in preparing tax returns and other documents for customers that were intended to be used (and were in fact used) in connection with material matters arising under the internal revenue laws.

27. The defendants knew that these returns and other documents (if so used) would result in understatements of customers' tax liabilities. The defendants have thus engaged in conduct subject to penalty under 26 U.S.C. § 6701.

Count II

Return-preparer injunction under 26 U.S.C. § 7407

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

29. 26 U.S.C. § 7407 authorizes a court to enjoin a person from, among other things,

> 1. engaging in conduct subject to penalty under 26 U.S.C. § 6694 (which penalizes a return preparer who prepares or submits a return that contains an unrealistic position), 26 U.S.C. § 6695(b-c) (which penalizes a return preparer who fails to sign returns and furnish an identification number), and 26 U.S.C. § 6695(g) (which penalizes return preparers who fail to exercise due diligence in determining eligibility for the Earned Income Tax Credit), and
>
> 2. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

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

30. The defendants have continually and repeatedly prepared or submitted federal tax returns that contain unrealistic positions subject to penalty under 26 U.S.C § 6694.

31. The defendants have continually and repeatedly failed to exercise due diligence in determining their customers' eligibility for the EITC.

32. The defendants have continually and repeatedly engaged in fraudulent and deceptive conduct that interferes with the proper administration of the internal revenue laws.

Count III

(Unlawful Interference with the Enforcement of the Internal Revenue Laws)

33. The United States incorporates by reference paragraphs 1 through 32.

34. Through the conduct described above, the defendants have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Unless enjoined by this Court, the defendants are likely to continue to engage in such conduct. The defendants' conduct is causing irreparable injury to the United States, and the United States has no adequate remedy at law:

a. The defendants' conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. Unless they are enjoined the IRS will have to expend substantial time and resources to detect future customers' returns with substantial understatements, and may be unable to detect all of them.

b. The detection and audit of bogus EITC refund claims filed by the defendants' customers will place a serious burden on the IRS's resources.

c. If the defendants are not enjoined, they likely will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701 that substantially interferes with the enforcement of the internal revenue laws.

WHEREFORE, the plaintiff, United States of America, respectfully prays for the following:

A. That the Court find that the defendants have engaged in repeated and continual conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that injunctive relief is appropriate under 26 U.S.C. § 7407 to bar the defendants from acting as income-tax-return preparers;

B. That the Court find that the defendants 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 them from engaging in further such conduct;

C. That the Court find that the defendants engaged in conduct that interferes with the enforcement of the internal revenue laws and substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief against them is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. §§ 7407 and 7402(a);

D. That the Court, under 26 U.S.C. § 7407, enter a permanent injunction prohibiting the defendants from acting as income-tax-return preparers;

E. That the Court, under 26 U.S.C. §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting the defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

(1) Further engaging in any conduct subject to penalty under 26 U.S.C. § 6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;

(2) Further engaging in any conduct subject to penalty under 26 U.S.C. § 6695, *i.e.*, failing to exercise due diligence in preparing federal income tax returns seeking refunds under the Earned Income Tax Credit;

(3) Further acting as federal-income-tax return preparers;

(4) Further engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and

(5) Further engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, assisting others in the preparation of any tax returns, forms, or other documents to be used in connection with any material matter arising under the internal revenue laws and which they know will (if so used) result in the understatement of income tax liability; and

F. That the Court, under 26 U.S.C. §§ 7402, 7407, and 7408, enter an injunction requiring the defendants to contact all persons and entities for whom they prepared any federal income tax returns or other tax-related documents after January 1, 2000, and inform those persons of the entry of the Court's findings concerning the falsity of representations made by the defendants on their customers' tax returns, and that a permanent injunction has been entered against the defendants.

G. That this Court, under 26 §§ 7402, 7207, and 7408, enter an injunction requiring defendants to turn over to the United States a complete list of all persons for whom defendants have prepared (or helped to prepare) any federal tax return, amended return, or refund claim since January 1, 2000, such list to include for each such person the name, address, phone number, e-mail address, social security number or employer identification number, and the tax period(s) to which or for which such return, amended return, or refund claim relates. The list shall include all customers whose returns defendants helped to prepare, even if those returns were filed listing someone else as preparer or listing someone else's social security or employer identification number as preparer, or listing someone else's electronic filing number.

H. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and

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

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