

**F06 5317**

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK **FILED**  
U.S. DISTRICT COURT E.D.N.Y. IN CLERK'S OFFICE

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
GARRY P. WEBB a/k/a GARRY P. )  
WEBB-BEY, )  
Defendant. )

\* SEP 28 2006 \*  
BROOKLYN OFFICE

Civil No. **TOWNES, J.**  
**REYES, M.J**

**COMPLAINT FOR PERMANENT INJUNCTION**

The plaintiff, the United States of America, complains and alleges against, Garry P. Webb, a/k/a Garry P. Webb-Bey, as follows:

1. This is a civil action brought by the United States pursuant to sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) ("I.R.C.") to restrain and enjoin Webb and all those in active concert or participation with him from:
  - a. preparing or filing federal income tax returns, amended returns, or other related documents and forms for others;
  - b. assisting in the preparation of federal income tax returns or forms that he knows will, if used, result in understating other persons' federal tax liability;
  - c. engaging in activity subject to penalty under I.R.C. §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
  - d. engaging in other conduct that interferes with the administration or enforcement of the internal revenue laws.

**Jurisdiction**

2. 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, pursuant to Internal Revenue Code (I.R.C.) (26 U.S.C.) §§ 7402(a), 7407, and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), 7407, and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Webb resides within this district in Brooklyn.

#### **Webb's Activities**

5. Webb prepares federal income tax returns and amended federal income tax returns for customers for a fee.

6. On these returns, Webb falsely underreports his customers' income, by attaching form 2555-EZ (foreign earned income exclusion) claiming a fraudulent foreign earned income exclusion.

7. Webb includes his customers' income on Form 1040, and then completely offsets that income with the bogus foreign earned income exclusion, which reduces his customer's reported tax to zero and results in the customers receiving refunds.

8. Webb falsely informs his customers that income earned in the 50 United States is foreign income and thus qualifies for the foreign earned income exclusion.

9. He asserts that only residents of the District of Columbia are required to pay federal income tax.

10. Webb has been preparing federal tax returns claiming false foreign earned income exclusions since at least 1997.

11. Webb improperly fails to sign the returns he prepares and files for customers.

12. The IRS has thus far identified 82 returns that Webb prepared and filed claiming the fraudulent foreign earned income exclusion.

13. The IRS notified Webb on May 28, 2004, that it was investigating his return-preparation business for possible violations of internal revenue laws.

14. The IRS sent Webb two appointment letters regarding his preparation of federal income taxes, but Webb failed to respond to both letters.

#### **Specific Example of Webb's Fraudulent Return Preparation**

15. Webb prepared and signed a 2001 tax return for a customer from New York City on October 1, 2003.

16. The tax return listed \$68,704.77 as income on line 7 of his customer's return. On line 21, Webb listed negative \$68,704.77 from Form 2555 that completely offset his customer's income.

17. His customer's Form W-2 and tax return indicated that she was employed by the City of New York and lived in New York City. Webb, however, used the foreign income exclusion to improperly reduce her taxes, by claiming that her New York City address was a foreign address.

18. The federal tax return Webb prepared improperly used the foreign income exclusion to reduce his customer's 2001 taxes and claim a tax refund of \$4,932.87.

#### **New York State Tax Representation**

19. In addition, to preparing frivolous federal tax returns Webb also represents the same customers before the New York State Division of Tax Appeals with respect to state tax issues. He raises similar frivolous arguments regarding his customers' state taxes.

20. Webb prepares documents for his customers' New York State tax appeals before the New York State Division of Tax Appeals, which assert "that under the political system of the

United States, the states are distinct from the United States government and that the states exercise sovereignty within their respective borders and that in order to be considered a foreign country, one must be present in an area under a government other than the government of the United States. Since New York State has a constitution and a government with a legislature empowered to make laws, petitioner maintains that New York State meets the criteria of a foreign country." *See Matter of Hyatt*, DTA No. 820157 (New York State Tax Appeals Tribunal, January 12, 2006).

21. The New York State Division of Tax Appeals has repeatedly found Webb's assertion that his customers are "not liable for personal income tax on her wage income because it was earned in a foreign country (i.e., New York State)" to be patently frivolous.

#### **Harm to the public**

22. Webb's preparation of false and fraudulent tax returns, to the extent that the IRS does not detect them and issues incorrect refunds, has resulted in customers receiving substantial tax refunds to which they are not legally entitled. The 82 Webb-prepared returns discovered by the IRS resulted in refund claims totaling \$335,605.86 and refunds issued in the amount of \$97,540.42.

23. Webb harms the United States because his customers are not reporting and paying their correct tax liabilities.

24. The IRS must audit the Webb customers it identifies to determine their correct tax liability, request that they change their positions by filing correct returns, and assess penalties. This effort is required for each return filed.

25. Webb's misconduct undermines public confidence in the administration of the federal tax system and encourages noncompliance with the internal revenue laws.

26. Webb further harms the United States because the IRS must devote its limited resources to identifying Webb's customers, ascertaining their correct tax liabilities, and recovering any refunds erroneously issued. Given the IRS's limited resources, identifying and recovering all revenues lost from Webb's preparation of false and fraudulent returns may be impossible.

**Count I**  
**Injunction under I.R.C. § 7407**

27. The United States incorporates by reference the allegations in paragraphs 1-26.

28. I.R.C. § 7407 authorizes a district court to enjoin an income tax preparer from engaging in conduct subject to penalty under I.R.C. §§ 6694 or 6695 or in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

30. If a court finds that a person has continually or repeatedly engaged in such conduct and that a narrower injunction prohibiting only that specific conduct would not be sufficient to prevent the person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as an income tax return preparer.

31. I.R.C. § 6694(a) penalizes a return preparer who understates a taxpayer's liability based on a position for which there was no realistic possibility of being sustained on the merits, if the return preparer knew or reasonably should have known of the unrealistic position and the

unrealistic position either was not disclosed as required by I.R.C. § 6662(d)(2)(B)(ii) or was frivolous.

32. I.R.C. § 6694(b) penalizes a return preparer who understates a taxpayer's liability due to willfulness, recklessness, or an intentional disregard of rules and regulations.

33. I.R.C. § 6695 penalizes a return preparer who fails to:

(a) furnish a copy of the return to the taxpayer, as required by I.R.C. § 6107(a),

(b) sign the return,

(c) furnish the return preparer's own identifying number on the return, as required by I.R.C. § 6109(a)(4), or

(d) as required by I.R.C. § 6107(b), retain a copy of the returns he prepares or a list of the names and taxpayer identification numbers of those for whom he prepares returns, and make the copies or list available to the IRS upon request.

34. Webb engages in conduct subject to penalty under I.R.C. § 6694 by preparing federal tax returns that understate his customers' liabilities based on positions for which there is no realistic possibility of being sustained on the merits: specifically, his patently frivolous and reckless misinterpretation of the foreign income exclusion.

35. Webb engages in conduct subject to penalty under I.R.C. § 6695 by failing to sign returns he prepares, failing to furnish his own identifying number on returns he prepares, and failing to produce to the IRS either a copy of all the returns he prepared or a list of the persons for whom he prepared returns.

36. Webb's repeated and continual conduct subject to penalty under I.R.C. §§ 6694 and 6695 falls within I.R.C. § 7407(b)(1)(A) and (D), and thus is subject to injunction under I.R.C. § 7407.

37. Webb is likely to continue to prepare fraudulent federal tax returns unless he is enjoined from preparing returns.

**Count II**  
**Injunction under I.R.C. § 7408**

38. The United States incorporates by reference the allegations in paragraphs 1-37.

39. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. § 6700 or § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

40. I.R.C. § 6701 imposes a penalty on any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having a reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and that if it is so used it would result in an understatement of another person's tax liability.

41. Webb prepares returns that he knows or has reason to believe would be used in connection with a material matter arising under the internal revenue laws—the determination of his customers' tax liabilities—and that result in an understatement of his customers' tax liabilities.

42. Unless enjoined by this court, Webb is likely to continue to engage in such conduct.

43. Injunctive relief is therefore appropriate under I.R.C. § 7408.

**Count III**  
**Injunction under I.R.C. § 7402(a)**  
**for Unlawful Interference with Enforcement of the**  
**Internal Revenue Laws and Appropriateness of Injunctive Relief**

44. The United States incorporates by reference the allegations in paragraphs 1 through 43.

45. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing the internal revenue laws.

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

47. Enjoining Webb 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 Treasury.

48. Injunctive relief is appropriate under 26 U.S.C. § 7402(a).

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

A. That the Court find that Webb has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695, and 6701 and that injunctive relief under I.R.C. §§ 7407 and 7408 is necessary and appropriate to prevent recurrence of that conduct;

B. That the Court find that Webb has interfered with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers;

C. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter a permanent injunction prohibiting Webb from preparing or filing, or assisting in the preparation or filing of federal income tax returns for any person other than himself;

D. That the Court, pursuant to I.R.C. §§ 7402(a) and 7408, enter a permanent injunction prohibiting Webb, individually and doing business under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

- a. preparing or filing federal income tax returns, amended returns, or other related documents and forms for others;
- b. assisting in the preparation or filing of federal income tax returns or forms that he knows will, if used, result in understating other persons' federal tax liability;
- c. engaging in activity subject to penalty under I.R.C. §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
- d. engaging in other conduct that interferes with the administration or enforcement of the internal revenue laws.

E. That the Court, pursuant to I.R.C. § 7402(a), enter an injunction requiring Webb to contact by mail, at his expense, all individuals for whom he has prepared returns, or any other tax-related document for submission to the IRS, and inform those individuals of the Court's findings and attach a copy of the permanent injunction against him;

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 6695 enter an injunction requiring Webb to produce to counsel for the United States a list identifying by name, Social

Security number, address, e-mail address, and telephone number all persons for whom he has prepared federal tax returns and any other tax-related document for submission to the IRS;

G. That the Court, pursuant to I.R.C. § 6695, order Webb to produce to counsel for the United States copies of all federal tax returns, including amended returns, and any other documents he has prepared for any person for submission to the IRS from January 1, 2000, to the present;

H. That the Court order Webb to complete the requirements listed in paragraphs E through G within eleven days of the Court's order and order Webb to file with the Court a certificate of compliance with those requirements, signed under penalties of perjury, along with evidence of compliance, within twelve days of the Court's order;

I. That the Court retain jurisdiction over Webb and this action for the purpose of enforcing any permanent injunction entered against Webb;

J. That the United States be entitled to conduct discovery for the purpose of monitoring Webb's compliance with the terms of any permanent injunction entered against him; and

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

Dated: September 27, 2006

Respectfully submitted,

ROSLYNN R. MAUSKOPF  
United States Attorney



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