

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case no. 08-cv-2432
)	Judge Hibbler
LASHAWN LITTRICE and DIAMOND)	
ACCOUNTING & FINANCIAL SERVICES,)	
INC.,)	
)	
Defendants.)	
_____)	

**MEMORANDUM IN SUPPORT OF UNITED STATES’
MOTION FOR PRELIMINARY INJUNCTION**

The Government seeks to enjoin the defendants under §§ 7402, 7407 and 7408 of the Internal Revenue Code (IRC) (26 U.S.C.) from further preparing and filing federal tax returns and from further violating the tax laws. The defendants annually prepare and file over a thousand federal income tax returns, the overwhelming majority of which contain fictitious deductions which the defendants deliberately create. The proposed preliminary injunction sought at this time would bar the defendants from preparing or filing tax returns for others.

Statement of the Evidence

The defendants, LaShawn Littrice and Diamond Accounting & Financial Services, Inc. (“Diamond Accounting”), are income tax return preparers as defined by IRC § 7701(a)(36). That is, they are paid to prepare other people’s tax returns.¹ Littrice is Diamond Accounting’s sole shareholder and officer. She is also its registered agent.²

¹ Revenue Agent Chlimon Declaration at ¶ 4.

² *Id.* at ¶ 6. As a corporation, Diamond Accounting can, of course, only operate through its agents, officers and employees. As such, the actions of Littrice (described herein) can also be attributed to Diamond Accounting.

The defendants rely on advertising and customer referrals to bring in customers to their tax return preparation business.³ The defendants have a reputation for generating larger than expected tax refunds for customers.⁴ Their customers are mostly from Illinois, and most of those are from the Chicago area.⁵

Customers visit Diamond Accounting's office and speak briefly with Littrice about their federal income tax return preparation. Littrice asks few questions of the customers and requests minimal information.⁶ Littrice concocts numbers when completing customers' tax returns. The defendants falsify and manufacture expenses and deductions on the returns, notably on Schedule A as charitable contributions and employee benefit expenses, Schedule C income and expenses, and education credits. She also makes false claims for the Earned Income Tax Credit.⁷

Littrice's conduct results in the defendants' customers obtaining larger refunds than they are properly entitled to or reporting and paying less taxes.⁸

The following chart is a summary of the IRS's investigation of the individual federal income tax returns Littrice prepares and Diamond Accounting files:⁹

³ *Id.* at ¶ 24.

⁴ Chlimon Decl. at ¶ 25. *See also* Declarations of Carolyn Rhyne-Leslie, Stephanie Moore, Francisco Silva and Mary Hampton.

⁵ Chlimon Decl. at ¶ 24.

⁶ *Id.* at ¶ 16; *see also* Declaration of Cherise Bozeman.

⁷ Chlimon Decl. at ¶ 14; *see also* Bozeman Decl.

⁸ Chlimon Decl. at ¶ 26.

⁹ *Id.* at ¶ 11.

	2003	2004	2005	Total
Forms 1040 Prepared by Littrice	1,118	1,400	1,341	3,859
Returns Examined	383	224	55	662
Examined Returns with Changes in Tax	374	219	51	644
Error Rate (% of inaccurate returns)	97.65%	97.77%	92.73%	97.28%
Tax Deficiencies from Returns with Changes	\$1,047,073	\$697,703	\$189,544	\$1,934,320
Average Deficiency Per Changed Return	\$2,800	\$3,186	\$3,717	\$3,004
Projected Tax Loss (# of returns × error rate × average deficiency per return)	\$3,056,469	\$4,360,644	\$4,621,427	\$12,038,540

As shown in the chart, the IRS has examined 662 returns prepared and filed by the defendants. The examination revealed that all but eighteen of the examined returns understated the customer's tax liability.¹⁰

Examples of Defendants' Fraudulent Return Preparation:

In preparing returns, Littrice ignores information given to her by customers or simply fabricates tax deductions and other items on the tax returns. For example, in preparing customer Carolyn Rhyne-Leslie's 2003, 2004 and 2005 tax returns, Littrice improperly claimed deductions for nonexistent and unsubstantiated employee business expenses and charitable contributions. Despite statements from Rhyne-Leslie that her 2003 expenses were minimal, if any, and that she had none for 2004 and 2005, Littrice reported employee business expenses of \$6,416, \$7,584 and \$7,495 for years 2003, 2004 and 2005, respectively. Littrice also included on the returns cash charitable contributions of \$7,789 (for tax years 2003), \$8,805 (2004) and \$7,841 (2005) even though Rhyne-Leslie did not inform Littrice of any charitable contributions. Littrice told Rhyne-

¹⁰ The IRS has begun examining returns prepared by Littrice for the 2006 year (which would have been prepared in 2007). Chlimon Decl. at ¶ 12. Results of these audits will be submitted to the Court posthaste upon completion.

Leslie that she could deduct ten percent of her wages as charitable contributions. Rhyne-Leslie paid Littrice "\$300 to \$400" a year for return preparation. This customer has since entered into an installment plan arrangement with the IRS to pay her 2003 through 2005 deficiencies.¹¹

In preparing customer Stephanie Moore's 2003 and 2005 returns, Littrice completely fabricated medical/dental expenses, employee business expenses, and charitable contributions. For 2003 the only document Moore gave Littrice was a Form W-2. According to Moore, Littrice completed the 2003 return (which included medical/dental expenses of \$5,178, employee business expenses of \$7,213 and charitable contributions of \$7,379) without asking further questions. Moore was retired in 2005 and only provided Littrice documents associated with his retirement income for that year when he went to see her in early 2006. Without any foundation whatsoever, Littrice included medical/dental expense deductions (\$5,142) and charitable contribution deductions (\$6,953) on the 2005 return. She also included a \$1,500 education credit on the return despite Moore not mentioning anything about incurring any costs associated with education. This customer sought the services of Littrice after hearing in the neighborhood that Littrice could maximize a person's tax refund. Moore has consented to the IRS's audit adjustments.¹²

Numerous other customers tell a similar story regarding the defendants' return preparation practice. For instance, Juan Gallegos and his wife went to the defendants for return preparation after having heard from coworkers that Littrice could generate large tax refunds. It was not until the IRS examined their 2003-2005 returns that they realized that Littrice had claimed thousands of dollars of employee business expense deductions. The Gallegoses did not

¹¹ Rhyne-Leslie Decl.

¹² Moore Decl.

discuss employee business expenses with Littrice and provided her with no documentation regarding such expenses. Littrice also falsely claimed between \$7,821 and \$9,072 in annual charitable contributions despite the Gallegoses telling her that they donated at most \$20 a week to their church. Their 2005 return claimed a \$6,000 child care expense allegedly paid to St. Walter School. The Gallegoses never heard of that school and never used its services. Littrice simply fabricated the item (and others).¹³

In preparing Francisco Silva's 2003-2005 return, Littrice deducted nondeductible commuting expenses from home to work (and also made up the amounts). Pursuant to her usual practice, Littrice also fabricated charitable contributions without any foundation. Silva agreed to the IRS examination adjustments and has paid the balance due.¹⁴ Littrice also greatly inflated employee business expense deductions and charitable contributions on customer Calvert Griffin's income tax returns. On Griffin's 2003 and 2004 returns, Littrice claimed charitable deductions of \$7,417 and \$7,398, respectively, without ever asking him the amount of his donations.¹⁵

Littrice mischaracterized Mary Hampton's filing status on her 2003 return as "head of household" instead of "married filing separately" despite being informed that Hampton and her husband were married and living together during all of 2003. Littrice also included various business expenses on Hampton's return without any indication whatsoever that Hampton had a business. Hampton has since entered into an installment agreement with the IRS to pay the tax

¹³ Gallegos Decl.

¹⁴ Silva Decl.

¹⁵ Griffin Decl.

liabilities due for 2003.¹⁶

IRS Undercover Operation:

On February 3, 2005, the IRS conducted an undercover operation of Littrice and Diamond Accounting and their return preparation business.¹⁷ On that date, an IRS undercover agent went to Diamond Accounting's office and met with Littrice, posing as a customer who wanted to have a 2004 income tax return prepared. The undercover agent gave a Diamond Accounting employee a Form W-2 for 2004 and the Social Security cards for herself and one dependent. The undercover agent told the employee that she was a construction worker and did not own real estate. The employee informed the undercover agent that he would input the customer's personal information into the computer and that Littrice would complete the tax return.

Later that afternoon the undercover agent met with Littrice. Littrice asked the undercover agent whether she incurred education expenses for the year 2004. The agent responded "no." Littrice asked the agent if she had taken any college courses. The agent responded, "no, I just took a class here or there, maybe two to three years ago." The return prepared by Littrice for the agent included a false claim of \$2,000 for education expenses. The return also included a false \$6,998 charitable contribution deduction although the undercover agent never told Littrice that she made charitable contributions. On the return she prepared for the undercover agent, Littrice also falsely claimed unreimbursed employee expenses of \$3,546, unidentified business expenses of \$2,589, and meals and entertainment expenses of \$2,158.

¹⁶ Hampton Decl. *See also* Smith Decl. (Littrice falsely created and included business expenses on taxpayer's return); Chlimon Decl. at ¶¶ 17-18; and Special Agent Acevedo Decl. at ¶¶ 16-26 (more examples of defendants' misconduct).

¹⁷ Acevedo Decl. at ¶ 27.

None of these amounts or items were supported by information given by the agent to Littrice or the Diamond Accounting worker.

The information the undercover agent provided Littrice and Diamond Accounting should have resulted in a tax balance due of approximately \$1,216 on the 2004 individual tax return. Instead, with the false deductions manufactured by Littrice, the tax return resulted in a refund of approximately \$800. Littrice informed the IRS undercover agent that \$300 would be deducted from the refund as a return preparation fee. On February 18, 2005, the undercover agent went to Diamond Accounting's office and Littrice provided the agent with a refund check.¹⁸

Other Recent Misconduct by the Defendants:

Diamond Accounting is an "Electronic Return Originator" ("ERO"). An ERO is an entity that is authorized to initiate the electronic submission of tax returns to the IRS. That is, the ERO electronically transmits or files tax returns with the IRS.¹⁹ Until 2007 Littrice listed herself as the preparer for all tax returns electronically filed by Diamond Accounting.²⁰ In 2007, after learning of the IRS investigation of the defendants, Littrice began filing returns, through Diamond Accounting, with the IRS (for tax year 2006) that contained a preparer tax

¹⁸ Details of the undercover operation are set forth in the Acevedo Declaration at ¶¶ 27-39. The Acevedo Declaration (as well as the Chlimon Declaration) contain some hearsay. However, because of the need to stop ongoing harm, "a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. A party is thus not required to prove his case in full at a preliminary-injunction hearing." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Courts frequently consider affidavits and other hearsay materials that would not be admissible evidence for a permanent injunction. *S.E.C. v. Cherif*, 933 F.2d 403, 412 n.8 (7th Cir. 1991) ("hearsay can be considered in entering a preliminary injunction"); *Asseo v. Pan Am. Grain Co., Inc.*, 805 F.2d 23, 26 (1st Cir. 1986) ("The dispositive question is not their classification as hearsay but whether, weighing all the attendant factors, including the need for expedition, this type of evidence was appropriate given the character and objectives of the injunctive proceeding.").

¹⁹ Chlimon Decl. at ¶ 7; Acevedo Decl. at ¶ 9.

²⁰ Chlimon Decl. at ¶ 8 and 19.

identification number (“PTIN”) not belonging to Littrice. The PTIN on returns filed by Diamond Accounting in 2007 belongs to a retired return preparer living in Colorado. This person did not prepare any of the returns that were filed by Diamond Accounting and had no knowledge that her PTIN was being used on any returns prepared and filed by the defendants. The defendants are placing an incorrect PTIN on returns they file with the IRS.²¹

Littrice has knowledge of the IRS investigation into the defendants’ return preparation activities, yet the defendants have continued to prepare and file federal tax returns that they know are false.²²

Law and Argument

I. Defendants Should be Enjoined under IRC § 7407 from Preparing and Filing Federal Income Tax Returns.

Section 7407(b) authorizes a court to enjoin a person from acting as an income tax return preparer if that person has engaged in conduct subject to penalty under IRC §§ 6694 or 6695, injunctive relief is appropriate to prevent the recurrence of the conduct, and a narrower injunction prohibiting only such misconduct would not be sufficient to prevent the person’s interference with the tax laws.²³ Section 6694 penalizes a return preparer who knowingly prepares or submits a return that contains a position for which there is no reasonable basis. Section 6695(c) penalizes a return preparer who fails to furnish the correct identification number

²¹ Chlimon Decl. at ¶¶ 19-22; Shirley Thuet Decl.

²² Chlimon Decl. at ¶¶ 22-23.

²³ As IRC § 7407 expressly authorizes the issuance of an injunction upon satisfying these criteria, the United States is not required to meet the traditional equitable factors typically required before the issuance of an injunction. *See United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) (“The traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction.”); *United States v. Reddy*, 500 F. Supp.2d 877, 881 (N.D. Ill. 2007) (holding that for a preliminary injunction under § 7407 the traditional injunction test is not applied and only the statutory criteria of the statute needed to be met).

with respect to any return for which she is the preparer.

A preliminary injunction barring each of the defendants from all tax return preparation is appropriate because they have continually and repeatedly engaged in conduct subject to penalty under IRC §§ 6694 and 6695, and because of the nature and extent of those violations, a narrower injunction would not be effective.

A. Defendants violated IRC § 6694 by fabricating deductions and credits on the returns they prepared and filed.

Littrice has continually and repeatedly engaged in conduct subject to penalty under § 6694 by preparing returns that falsely claim deductions and credits. She knows that the returns are erroneous because she simply invents credits and deductions such as employee business expenses and charitable contributions. She ignores information given to her by customers or does not ask for relevant information.

The IRS investigation has revealed that over ninety-seven percent of the returns prepared by Littrice that it has examined contain false or fraudulent items that result in an unlawful reduction of the customers' tax liabilities. The investigation, with the audits of customers' returns and the IRS undercover operation, shows that Littrice intentionally understates customers' taxes by fabricating false deductions and credits.

B. Defendants violated IRC § 6695 by failing to provide the correct identifying number on the returns that they prepared and filed.

Beginning in 2007, after Littrice had learned of the IRS investigation into the defendants' practices, Diamond Accounting began filing returns that Littrice had prepared but had failed to provide her correct preparer tax identification number. The returns contained the identification number of a retired Colorado preparer who was unaware of the defendants' conduct. The defendants have thus violated IRC § 6695(c), which imposes a penalty on preparers who fail to

provide the correct identification number on the returns they prepare. This deceptive conduct hinders the IRS's ability to investigate the defendants' return preparation activity.

C. A preliminary injunction prohibiting any future tax returns is warranted.

As set forth above, the defendants have violated IRC §§ 6694 and 6695 (and as discussed below, § 6701). Once the United States shows that a statutory violation has occurred, it need only show that there is a "reasonable likelihood of future violations" in order to obtain injunctive relief.²⁴ Factors that may be relevant in determining the likelihood of future violations of the tax code, and thus the need for an injunction, include: the gravity of the harm caused by the offense; the extent of the defendant's participation and degree of scienter; the isolated or recurrent nature of the infraction; the defendant's recognition (or non-recognition) of his own culpability; the likelihood that defendant's occupation would place him in a position where future violations would be anticipated; and the sincerity of his assurances against future violations. *Reddy*, 500 F. Supp. 2d at 882 (citing *Kaun*, 827 F.2d at 1149-50).

These factors are all satisfied here. First, the harm caused is grave. The defendants' customers have been harmed because the customers have paid defendants substantial fees to prepare tax returns that understate their income tax liabilities. The United States is harmed because defendants' customers are not paying the correct amount of taxes to the United States Treasury. Moreover, identifying and recovering all revenues lost from the defendants' scheme may be impossible, resulting in a permanent loss to the United States Treasury. The public is harmed because the IRS is forced to devote resources to identifying and attempting to recover revenue lost as a result of the defendants' business, thereby reducing the level of service that the

²⁴ *United States v. Kaun*, 827 F.2d 1144, 1148 (7th Cir. 1987) (citing *S.E.C. v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982)); *Reddy*, 500 F. Supp.2d at 882.

IRS can give to other taxpayers. The IRS has identified more than 600 erroneous returns so far that have been prepared by Littrice.²⁵ This number continues to grow.

Second, the extent of the defendants' participation is broad. Littrice, who personally prepares the erroneous returns, is the driving force behind Diamond Accounting, which is the vehicle used for the abusive return preparation business. Third, Littrice holds herself out as an experienced return preparer who is knowledgeable about the law. Next, the conduct is repeated and continual. Given that the defendants remain in business and that the very nature of their business is tax services, future violations are likely absent an injunction. Lastly, Littrice has never owned up to her culpability. Instead, when she learned that the defendants were the subject of an IRS investigation she began filing returns using someone else's preparer tax identification number.

The Court should enter a preliminary injunction under IRC § 7407 prohibiting both defendants from (a) preparing or filing federal income tax returns, amended returns, and other related documents for others, and (b) engaging in any other activity subject to penalty under IRC §§ 6694 and 6695.²⁶ This is especially important as the return filing season is upon us.

II. A Preliminary Injunction Should Issue under IRC § 7408 before Defendants Engage in Further Conduct Subject to Penalty under IRC § 6701.

This Court has authority to grant the requested preliminary injunction under IRC § 7408 if the Government proves that the defendant engaged in conduct subject to penalty under IRC §

²⁵ Only a tiny fraction (less than three percent) of the returns prepared by the defendants that have been examined by the IRS are not erroneous.

²⁶ Other courts have enjoined return preparers from preparing returns after finding that the preparer inflated or fabricated deductions. *See, e.g., Reddy*, 500 F. Supp.2d 877, 881-84; *United States v. Bailey*, 789 F. Supp. 788, 813 (N.D. Tex. 1992); *United States v. Franchi*, 756 F. Supp. 889, 893 (W.D. Pa. 1991).

6701 and injunctive relief is appropriate to prevent the recurrence of such conduct.²⁷ Section 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a tax return or other document that the person knows, if used, would result in an understatement of tax liability. In the instant case, it cannot be disputed that the defendants prepare and file federal income tax returns for customers. That is the nature of their business. As explained above, Littrice had knowledge that the returns she prepared, which contained numerous erroneous items, would be used to understate customers' correct tax liabilities. As such, the defendants' conduct is subject to penalty under § 6701, and is therefore enjoined under IRC § 7408.

Moreover, it is apparent that injunctive relief is needed to prevent the recurrence of the misconduct. Future violations of the tax laws are likely in that the defendants have continually and repeatedly prepared and filed erroneous federal tax returns for at least the past five years. Fabricating fictitious deductions and credits on the returns they prepare and file is the backbone of their business. There is nothing to suggest that they will not continue to deliberately prepare bogus returns absent an injunction prohibiting their preparation of tax returns for others. The defendants' conduct with respect to their abusive return preparation business thus warrants an injunction under IRC § 7408.

III. A Preliminary Injunction Should Issue Based Upon IRC § 7402 to Prevent Defendants from Engaging in Activities that Interfere with the Enforcement of the Tax Laws.

This Court is authorized by IRC § 7402 to issue an injunction "as may be necessary or appropriate for the enforcement of the internal revenue laws." That statute manifests "a

²⁷ As with IRC § 7407, because § 7408 expressly provides for an injunction, the traditional guidelines for equitable relief do not have to be established for an injunction to issue. *United States v. Gleason*, 432 F.3d 678, 682 (6th Cir. 2005); *Estate Pres. Servs.*, 202 F.3d at 1098; *United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985); *United States v. Buttorff*, 761 F.2d 1056, 1059 (5th Cir. 1985).

Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws,”²⁸ and “has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute.”²⁹ The legislative history accompanying § 7408 explicitly states that “the court will continue to have full authority under [§ 7402] and will continue to possess the great latitude inherent in equity jurisdiction to fashion appropriate relief.” S. Rep. No. 97-494, vol. 1 at 269 (1982), *reprinted in* 1982 U.S.C.C.A.N. 781, 1014.

Here, injunctive relief under § 7402 is appropriate to prevent the defendants from continuing to interfere with tax enforcement. Littrice’s false tax advice and erroneous return preparation interfere with the enforcement of the internal revenue laws by discouraging customers from complying with the internal revenue laws. The defendants’ return preparation activities cause the Government irreparable harm and the Government’s remedies at law are inadequate.³⁰ Customers who hire the defendants’ for return preparation file improper, inaccurate tax returns and do not pay their proper federal income taxes. The IRS is forced to examine those persons’ returns, assess deficiencies, and then try to collect on those deficiencies. The defendants undermine public confidence in the fairness of the federal tax system.

The Government requests that the Court, under the broad authority of IRC § 7402(a),

²⁸ *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957). See *United States v. First Nat’l City Bank*, 568 F.2d 853 (2d Cir. 1977).

²⁹ *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984). See *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) (“federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from disseminating their rather perverse notions about compliance with the Internal Revenue laws or from promoting certain tax avoidance schemes”), *aff’d*, 827 F.2d 1144 (7th Cir. 1987).

³⁰ Other remedies available to the Government involve examinations of each individual taxpayer who has a return prepared by the defendants. Due to the number of customers, this would be extremely burdensome.

order the defendants to notify their customers of the Court's ruling in this matter. This action is necessary to publicize the false and fraudulent nature of the defendants' business. A preliminary injunction at this time would constitute a public service.

Conclusion

For the reasons stated above and to prohibit Littrice and Diamond Accounting from future violations of the internal revenue laws, the Court should enter a preliminary injunction against the defendants pursuant to IRC §§ 7402, 7407 and 7408.

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Certificate of Service

It is hereby certified that on May 1, 2008, I electronically filed the foregoing with the Clerk of Court using the cm/ecf system, which will send notification of such filing to the parties of record registered to use the cm/ecf system.

s/ Martin M. Shoemaker
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