

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No.: 3:09-cv-00517
LUCKY P. NGO,)	
)	
Defendant.)	
)	
)	
_____)	

**FIRST AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND OTHER RELIEF**

By amended complaint, the United States of America seeks a permanent injunction against Lucky Ngo, (hereinafter, “defendant”), permanently barring Ngo from preparing federal income tax returns for others. The United States amends its complaint by withdrawing corporate defendants Lucky Tax and Translation Service, Inc., and Water Inn.

1. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a deputy of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of Internal Revenue Code (“IRC”) (26 U.S.C.) §§ 7401, 7402, 7407 and 7408.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and IRC §§ 7402(a), 7407, and 7408.

3. This is a civil action brought by the United States under IRC §§ 7402(a), 7407, and 7408 to enjoin defendant, 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 for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;

- (B) preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents and forms for others;
- (C) understating customers' liabilities as subject to penalty under IRC § 6694;
- (D) engaging in conduct subject to penalty under IRC § 6701;
- (E) engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6701, or any other penalty provision of the IRC; and
- (F) engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because a substantial portion of the activities occurred within this district.

Defendant

5. Lucky P. Ngo is a paid federal income tax return preparer in the Garland, Texas area. Ngo has been working as a professional return preparer for at least 10 years, and has prepared at least 6,193 federal income tax returns since 2004. Ngo has also prepared 3 corporate tax returns and 7 partnership returns. Ngo has a bachelor's degree from Grantham College in Florida, and has been trained to use Drake's tax return preparation computer software.

6. Ngo has prepared federal income tax returns for others under the corporate name (and employer identification number for) Lucky Tax and Translation Service, LLC, located at 4750 N. Jupiter Road, #102, in Garland, Texas. Ngo is a 90% shareholder in the company. Ngo also prepared returns under the corporate name (and employer identification number for) Water Inn, located at 2717 Wedgemere Drive, in Garland, Texas. Ngo is a 10% shareholder in Water Inn.

Customers

7. Many of Ngo's customers attend a local church that Ngo and his wife attend.

8. Ngo recruits his customers by word-of-mouth at his church, through advertising in the church bulletin, the church calendar, local magazines published in Vietnamese, and by word-of-mouth in the local community.

9. Many of Ngo's customers are Vietnamese-Americans. Some do not speak, read, or write English and, therefore, rely on Ngo to prepare their federal income tax returns accurately and honestly. Many of Ngo's customers are self-employed manicurists or nail salon employees.

10. After Ngo prepares his customers' federal income tax returns, he gives the completed returns back to the customers, and instructs the customers to sign and file their completed returns with the IRS.

IRS Investigation

11. The IRS has audited 124 federal income tax returns that Ngo prepared for customers. The IRS conducted the audits in three phases, first examining 61 returns, later examining 15 more, and later, randomly selecting and auditing 48 additional returns.

12. During these audits, the IRS discovered that 113 of the 124 audited returns contained fabricated and exaggerated deductions for non-deductible expenses that Ngo had claimed on IRS Forms Schedule A and C.

First Round of IRS Audits

13. In 2006 and 2007, upon discovering a pattern of suspicious deductions on returns being prepared by defendant Ngo, the IRS audited 61 federal income tax returns Ngo had prepared for tax years 2003, 2004, and 2005.

14. During the audits, revenue agents confirmed that Ngo had claimed false deductions (and made other errors) on 60 of the 61 audited returns.

15. Specifically, the audits of the 61 returns revealed:

- a. 29 improper deductions for car and truck expenses;
- b. 24 improper deductions for “other expenses,” which included non-deductible telephone and laundry expenses;
- c. 11 improper deductions for non-deductible personal insurance costs; and
- d. 8 improper deductions for rent.

16. The IRS calculated that, by preparing these 61 audited returns, Ngo caused a total harm to the United States in the amount of \$160,625.

Second Round of IRS Audits

17. Later, the IRS audited another 15 Ngo-prepared returns for tax years 2004, 2005, and 2006.

18. During these audits, the IRS discovered that some of the returns contained highly suspicious and identical deductions, in the same amounts, for the same purported expenses, including commuting expenses, car and truck expenses, telephone expenses, and “clean-up” expenses.

19. Moreover, all 15 of the audited returns contained improper Schedule A and C deductions, including false business deductions for the same non-deductible expenses the IRS discovered during the first round of audits, including commuting expenses, car and truck expenses, telephone expenses, and “clean-up” expenses.

20. Taxpayers are not entitled to claim deductions for commuting expenses. IRS Publication 463 provides:

You cannot deduct the costs of taking a bus, trolley, subway, or taxi, or of driving a car between your home and your main or regular place of work. These costs are personal commuting expenses. You cannot deduct commuting expenses no matter how far your home is from your regular place of work. You cannot deduct commuting expenses even if you work during the commuting trip.

Instead, taxpayers are only entitled to claim deductions for “ordinary and necessary business expenses paid or incurred during the taxable year in carrying on any trade or business.” 26 U.S.C. § 162(a).

Customer Statements

21. During the second round of audits, customers told the IRS that they had not requested Ngo to claim, or discussed with Ngo many of the deductions Ngo claimed on their behalf, such as deductions for commuting, gas, and uniform expenses. Thus, Ngo fabricated these business and itemized deductions for his customers.

22. Other customers told the IRS that Ngo had assured them that certain expenses were deductible and lawful, although they were not. Following a pattern, these non-deductible expenses included commuting and telephone costs.

23. Based on these 15 audited returns, the IRS calculated that Ngo caused an additional \$24,418 in actual harm to the United States.

26. As the IRS was concluding its audits of these 15 Ngo-prepared returns, revenue agents personally met with Ngo, on January 25, 2007, at his place of business, Lucky Translation and Tax Services, located at 4750 N. Jupiter Road, Suite 102, in Garland, Texas, to discuss their audit findings with him.

Ngo’s First Meeting With The IRS: January 25, 2007

27. During the January 25 meeting with Ngo, IRS revenue agents explained the problems they had discovered on returns they had audited. The revenue agents reviewed with

Ngo the tax returns and improper deductions, and explained to him the reasons why the deductions were improper. The revenue agents explained, for example, that it was improper to claim car and truck expenses, including commuting expenses, for his customers because taxpayers are not entitled to deductions for commuting expenses and other personal vehicle expenses. The revenue agents also explained to Ngo that it was improper for him to claim business deductions for his customers' personal expenses, such as telephone and laundry costs.

28. During the January 25 meeting, Ngo stated that he understood the revenue agents' explanations regarding why the deductions he had claimed for his customers were improper and non-deductible.

29. During the January 25 meeting, Ngo assured the revenue agents that he would stop claiming the improper deductions.

30. Despite his assurances, however, Ngo has continued to prepare returns claiming the same illegal deductions.

Ngo's Second Meeting With The IRS: December 20, 2007

31. The IRS met with Ngo a second time, again at his place of business, on December 20, 2007. During this meeting, a revenue agent and an IRS attorney again explained to Ngo the problems they had uncovered during audits. They reviewed the specific tax returns and bogus deductions Ngo had claimed, and explained to Ngo why the deductions were improper.

32. Ngo again assured the IRS revenue agent and attorney that he understood their explanations concerning why the deductions he had claimed were improper, and Ngo again promised that he would stop claiming bogus deductions to which his customers were not entitled.

33. However, Ngo did not stop claiming the same improper deductions.

Third Round of IRS Audits

34. After its second meeting with Ngo, the IRS randomly selected and audited another 48 federal income tax returns that Ngo had prepared to determine whether Ngo was still claiming the same bogus tax deductions.

35. Ngo prepared 31 of these returns after his first meeting with the IRS on January 25, 2007, and prepared at least 10 of the returns after his second meeting with the IRS on December 20, 2007.

36. Notwithstanding the two meetings with the IRS, the audits of the 48 returns confirmed that Ngo has continued his pattern of claiming the same false deductions to which his customers are not entitled, including deductions for commuting costs and other personal expenses.

37. The audits of the 48 returns revealed:

- a. 39 false deductions on Forms Schedule C or A;
- b. 14 improper business deductions for commuting or other unsubstantiated car and truck expenses (9 of which Ngo claimed after his first meeting with the IRS, and 4 after his second meeting with the IRS);
- c. 16 improper business deductions for personal or other unsubstantiated expenses, including telephone and laundry expenses (10 of which Ngo claimed after his first meeting with the IRS, and 3 after his second meeting with the IRS);
- d. 10 improper Schedule A deductions for non-deductible expenses such as home insurance, grass clean-up, and home repair costs (8 of which Ngo claimed after his first meeting with the IRS, and 3 after his second

meeting with the IRS);

- e. 9 improper business deductions for personal automotive expenses or unsubstantiated insurance expenses; and
- f. 5 improper business deductions for personal or unsubstantiated vehicle repairs.

More Customer Statements

38. Additional customers told the IRS that Ngo had fabricated improper deductions on their returns. These customers explained to the IRS that they had not requested Ngo to take the deductions, or discussed with Ngo the expenses for which he had claimed false deductions on their behalf. For example, customers said Ngo never discussed deductions he claimed for purported gambling losses, grass and lawn clean-up costs, and home maintenance and repair.

39. Other customers told the IRS that Ngo had assured them that the non-deductible and improper deductions were lawful and deductible. For example, Ngo incorrectly told customers they were entitled to deductions for home insurance, home repairs, home owners' association dues, lawn services, and personal car expenses, including lease fees and insurance costs.

40. Ngo caused additional harm to the United States in the amount of \$74,550, averaging \$1,553 of harm per return, as calculated by the IRS.

Examples

41. The following chart illustrates some of the false deductions that Ngo has repeatedly claimed for customers, even after twice promising the IRS he would stop claiming the bogus deductions.

<u>Customer</u>	<u>Occupation</u>	<u>Tax Return</u>	<u>False Deductions</u>	<u>Harm</u>
Chittaranpanich	Janitor	2005	1. Telephone, Uniform & Laundry 2. Insurance 3. Car & Truck	\$1,142
Chittaranpanich	Janitor	2006 (prepared after first meeting with IRS)	1. Telephone, Uniform & Laundry 2. Car & Truck	\$932
Chittaranpanich	Janitor	2007 (prepared after two meetings with IRS)	1. Telephone, Uniform & Laundry	\$467
Johnson	Manicurist	2005	1. Telephone, Uniform & Laundry 2. Personal Vehicle Insurance	\$2,182
Johnson	Manicurist	2006 (prepared after first meeting with IRS)	1. Telephone, Uniform & Laundry 2. Personal Vehicle Insurance	\$3,407
Johnson	Manicurist	2007 (prepared after two meeting with IRS)	1. Commuting 2. Telephone, Uniform & Laundry 3. Personal Vehicle Insurance	\$2,028

Lam	Manicurist	2006 (prepared after first meeting with IRS)	1. Commuting 2. Telephone, Uniform & Laundry 3. Grass clean-up	\$2,066
Lam	Manicurist	2007 (prepared after first meeting with IRS)	1. Commuting 2. Telephone, Uniform & Laundry 3. Grass clean-up	\$3,847
Rahamadprasert	Janitor	2005	1. Rent 2. Insurance 3. Repairs 4. Telephone, Uniform & Laundry 5. Clean-up	\$6,654
Rahamadprasert	Janitor	2007 (prepared after two meetings with the IRS)	1. Car & Truck 2. Telephone, Uniform & Laundry	\$3,283
Truong	Manicurist	2005	1. Commuting 2. Telephone, Uniform & Laundry 3. Personal Vehicle Insurance 4. Personal Vehicle Repairs	\$1,106

Truong	Manicurist	2006 (prepared after first meeting with IRS)	1. Home Owners' Association Dues 2. Grass Clean-Up and Repairs	\$877
Truong	Manicurist	2007 (prepared after two meetings with IRS)	1. Home Owners' Association Dues 2. Car and Truck Expenses 3. Personal Vehicle Insurance 4. Machine Rent 5. Student Loan Interest Deduction	\$2,402

42. These false deductions, which Ngo claimed before and after his meetings with the IRS, reveal his blatant and willful attempts to unlawfully decrease his customers' tax liabilities by repeatedly claiming improper deductions to which his customers are not entitled. These facts show that Ngo will not cease this pattern of unlawful activity unless he is permanently enjoined from preparing returns for others.

Total Harm To The Government

43. The IRS randomly selected the last 48 returns it audited, revealing that Ngo had caused an average harm, per return, of \$1,553. When this per-return harm amount from the random sample is multiplied by the total number of federal income tax returns Ngo has prepared (6,193) for others since 2004, the total estimated harm that Ngo has caused to the United States is \$9,617,729.

Count I

Injunction Under IRC § 7407

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

45. IRC § 7407 authorizes a district court to enjoin a tax preparer from:

1. engaging in conduct subject to penalty under IRC § 6694;
2. engaging in conduct subject to penalty under IRC § 6695;
3. failing to comply with an IRS request under IRC § 6107(b);
4. misrepresenting his experience or education as a tax return preparer; or
5. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of the conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court 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, the court may enjoin the person from further acting as a federal income tax return preparer entirely.

46. Defendant has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by willfully and knowingly preparing federal income tax returns for customers that improperly understate customers' tax liabilities based on unrealistic, frivolous, and reckless positions.

47. Defendant has continually and repeatedly violated IRC § 6694 by preparing and filing federal income tax returns claiming false business deductions for non-deductible expenses on Forms Schedule C. Ngo understood that these business deductions were improper because the IRS personally informed him on two separate occasions that the deductions were improper. At both meetings, Ngo stated that he understood that the deductions he had been claiming were improper, and promised that he would stop claiming them. Nevertheless, Ngo continued to claim the very same non-deductible expenses, such as commuting costs, telephone, laundry, and personal insurance expenses. This pattern of conduct demonstrates Ngo's flagrant, intentional and knowing abuse of the law.

48. Defendant has continually and repeatedly violated IRC § 6694 by preparing and filing federal income tax returns that fraudulently claim itemized deductions for non-deductible personal expenses on Forms Schedule A, such as lawn care, rent and insurance. During their meetings with Ngo, IRS revenue agents had explained to Ngo that these deductions were also improper. He acknowledged that he understood, but he continued to claim the bogus Schedule A deductions.

49. Defendant's repeated and continual violations of IRC §§ 6694 fall within IRC § 7407(b)(1)(A) and (D), and thus are subject to an injunction under IRC § 7407.

50. If Ngo is not enjoined, he is likely to continue to file false and fraudulent tax returns.

51. Defendant's continual and repeated conduct subject to an injunction under IRC § 7407 demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent defendant's interference with the proper administration of the internal revenue laws. Thus, Ngo should be permanently barred from acting as a return preparer.

Count II

Injunction Under IRC § 7408

52. The United States incorporates by reference the allegations in paragraphs 1 through 51.

53. Section 7408(a)-(c), IRC, authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either IRC §§ 6700 or 6701, if injunctive relief is appropriate to prevent recurrence of such conduct.

54. Section 6701(a), IRC, penalizes 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 knowing that if it is so used it will result in an understatement of another person's tax liability.

55. As detailed above, defendant has knowingly and willfully prepared false federal tax returns for customers that he knew would understate the customers' correct tax liabilities. Ngo intentionally and knowingly prepared returns with fabricated and exaggerated deductions for expenses he knew were not deductible. What is more, Ngo continued to prepare these returns with bogus deductions even after two meetings with the IRS, during which he promised to stop claiming the false deductions. Ngo's conduct, therefore, is thus subject to penalty under IRC § 6701.

56. If the Court does not enjoin defendant, he is likely to continue engaging in conduct subject to penalty under IRC § 6701. Injunctive relief is therefore appropriate under IRC § 7408.

Count III

**Injunction Under IRC § 7402(a)
Necessary To Enforce Internal Revenue Laws**

57. The United States incorporates by reference the allegations of paragraphs 1 through 56.

58. Section 7402, IRC, authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

59. Defendant, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Ngo repeatedly, intentionally and knowingly prepared returns claiming improper deductions for non-deductible expenses on Forms Schedule A and C. Twice the IRS warned Ngo about the false deductions, but he has continued to persist in his unlawful conduct.

60. Unless enjoined, defendant is likely to continue engaging in this improper conduct. If defendant 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.

61. Enjoining Ngo is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop the illegal conduct and the harm it causes the United States.

62. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States prays for the following:

1. That the Court find that Lucky P. Ngo has continually and repeatedly engaged in conduct subject to penalty under IRC § 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 a narrower injunction prohibiting only this specific misconduct would be

insufficient;

2. That the Court find that defendant has engaged in conduct subject to penalty under IRC § 6701, and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

3. That the Court find that defendant has engaged in conduct that 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 IRC § 7402(a);

4. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Ngo, and all those 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 for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- b. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents and forms for others;
- c. understating customers' liabilities as subject to penalty under IRC § 6694;
- d. understating customers' liabilities as subject to penalty under IRC § 6701;
- e. engaging in any other activity subject to penalty under IRC §§ 6694, 6701, or any other penalty provision of the IRC; and
- f. engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

5. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring that defendant, 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 to inform them of the Court's findings concerning the falsity of defendant's prior representations and enclose a copy of the executed permanent injunction against him, and file

with the Court a sworn certificate stating that he has complied with this requirement;

6. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring defendant to produce to counsel for the United States within 30 days a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared federal tax returns or claims for a refund since January 1, 2005;

7. That the Court retain jurisdiction over defendant and over this action to enforce any permanent injunction entered against defendant;

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

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

DATED: April 17, 2009.

Respectfully submitted,

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