

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No.
)
)
GERARD MIRABELLA,)
)
 Defendant.)

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, for its complaint against Gerard Mirabella, states as follows:

1. This Court has jurisdiction pursuant to 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 enjoin Gerard Mirabella and his agents, representatives, servants, employees, attorneys, and those persons in active concert or participation with him, from:
 - (a) Acting as a federal tax return preparer or either directly or indirectly preparing or filing, or assisting in the preparation or filing of any federal tax return for any other person or entity;
 - (b) Engaging in any activity subject to penalty under 26 U.S.C. §§ 6694, 6695, or 6701;
 - (c) Engaging in similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

- (d) Engaging in any other activity subject to penalty under the Internal Revenue Code; and
 - (e) Representing persons before the Internal Revenue Service.
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 the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408.
 4. Mirabella resides in Spring Hill, Florida, within this judicial district. Mirabella operated his tax return preparation service as sole proprietorship within this judicial district.

Mirabella's Background and Business

5. Mirabella is an unenrolled return preparer who operates a tax preparation business from his home in Spring Hill, Florida.
6. Mirabella began preparing individual income tax returns for others in 1999.
7. Mirabella tells his customers that he is a former employee of the Internal Revenue Service and that the returns he prepares are “pre-audited” by the IRS, meaning that there will not be any future audits of his customers’ tax returns.
8. Mirabella has never been employed by the IRS, and the returns that he prepares have not been “pre-audited” by the IRS.
9. Mirabella’s customers mail him the financial information needed to prepare their income tax returns. Mirabella then prepares their returns and mails them back to the customers with a return envelope and a note requesting payment and assuring them that their returns have been pre-audited.
10. Mirabella’s customers pay between \$2,000 and \$4,000 for tax preparation services.
11. Mirabella generates new business through word of mouth as he gains a reputation for

being able to reduce one's tax liability or generate larger tax refunds than other preparers.

12. As a direct result of Mirabella's fraudulent and improper return preparation, his customers have filed federal income tax returns that understate their federal income tax liabilities or claim income tax refunds to which they were not entitled.

Overview of the Scheme

13. Mirabella willfully, intentionally, and recklessly understates his customers' income tax liabilities by preparing returns that improperly contain fabricated or inflated deductions on Schedule A (Itemized Deductions) and false business losses on Schedule C (Profit or Loss from Business).
14. As a result of reckless and/or intentional disregard of internal revenue rules and regulations, Mirabella prepares returns that greatly understate his customers' tax liabilities or fraudulently claim a refund.

Examples of False Returns Filed by Mirabella

Example No. 1

15. One customer hired Mirabella to prepare her 2004 tax return.
16. Mirabella and the customer never met, but the customer engaged Mirabella's services by speaking to him on the telephone.
17. Mirabella gave the customer his address, and the customer mailed him her W-2s and an IRS Form 1098 (mortgage interest statement).
18. Mirabella then prepared the customer's return and mailed it to her along with a note and a prepaid FedEx return envelope.
19. The note stated that the customer's tax return was audited, "clean," and signed by him. Mirabella requested that the customer mail him a check for \$3,000 using the enclosed

FedEx prepaid envelope.

20. The copy of the completed tax return that Mirabella mailed to the customer shows Mirabella's signature on the line for the tax return preparer; however, Mirabella did not sign the tax return that he submitted to the IRS.
21. On the tax return that Mirabella prepared for her, the customer claimed \$92,946 in deductions on her Schedule A and \$32,951 as a business loss on a Schedule C related to her alleged operation of a mortgage business.
22. The customer's tax return for tax year 2004 requested a refund of \$13,058.
23. Upon examination, 100% of the customer's Schedule C deductions were disallowed because the customer did not own a mortgage business, and thus did not incur any business losses.
24. Further, \$81,906 (88%) of the customer's Schedule A deductions were disallowed, including deductions of \$17,265 for medical and dental expenses, \$32,485 for charitable contributions, and \$21,625 for unreimbursed business expenses.
25. The examination resulted in a \$30,997 tax deficiency.
26. The customer did not supply Mirabella with any information regarding medical and dental expenses, charitable contributions, or unreimbursed business expenses.
27. The customer also did not supply Mirabella with any information regarding ownership of a mortgage business.
28. Mirabella supplied false information on the customer's tax return that resulted in a fraudulent understatement of tax liability and a fraudulent claim for a refund.

Example No. 2

29. Mirabella prepared another customer's personal income tax returns for tax years 2005 and 2006.
30. Mirabella prepared the returns and each year mailed them to the customer along with a note and a prepaid FedEx return envelope.
31. The note sent with the tax return for 2006 states that Mirabella "signed off on it and it's cleared." Mirabella requested that payment of \$3,000 be returned to him in the prepaid FedEx envelope "like last year."
32. Mirabella identified himself as the paid preparer of the tax return on the copies of the returns that he sent to the customer; however, Mirabella did not sign the returns that he submitted to the IRS.
33. Mirabella charged the customer \$3,000 each year to prepare his tax returns for tax years 2005 and 2006.
34. For tax year 2005, the customer claimed deductions of \$66,371 on his Schedule A, and \$44,330 for business losses due to a mortgage business on his Schedule C. The customer claimed to have no tax liability and did not claim to be entitled to a refund.
35. Upon examination, \$48,030 (72%) of the customer's Schedule A deductions were disallowed, including deductions of \$21,884 for medical expenses and \$24,118 for charitable contributions.
36. The customer did not own a mortgage business, so 100% of his Schedule C deductions were disallowed.
37. The examination resulted in a \$22,319 tax deficiency for tax year 2005.
38. The customer did not supply Mirabella with the false Schedule A and Schedule C

information.

39. For tax year 2006, the customer claim deductions of \$83,908 on his Schedule A. Clark claimed to be entitled to a refund of \$10,596.
40. Upon examination, \$39,906 (48%) of the deductions were disallowed, including deductions of \$15,304 for medical and dental expenses and \$23,980 for charitable contributions.
41. The examination resulted in a \$16,297 tax deficiency for tax year 2006.
42. Mirabella supplied false information regarding personal and business deductions on the customer's tax return that resulted in a fraudulent understatement of tax liability.

Example No. 3

43. Mirabella prepared one married couple's personal income tax return for tax year 2005.
44. The customers mailed Mirabella the information necessary to prepare their tax return, including W-2s, Form 1098 (home mortgage interest), and receipts for business expenses, medical expenses, and charitable donations.
45. Mirabella prepared the customers' tax return for tax year 2005 and mailed it to them with a noted and a prepaid FedEx return envelope.
46. The note said that the returns were "all cleared" and that Mirabella worked "very, very hard" on the return. The customers "would have owed over \$80,000 and [Mirabella] worked harder [sic] to bring it down to \$4,151."
47. Mirabella requested that the customers return a payment of \$3,000 "plus a tip" in the enclosed prepaid FedEx envelope. The customers paid Mirabella \$4,000 for his tax preparation services.

48. For tax year 2005, the customers claimed \$155,572 in Schedule A deductions, including more than \$50,000 in casualty and theft losses.
49. The customers did not give Mirabella any information regarding a casualty or theft loss and did not incur any such loss in 2005.
50. Upon examination, \$135,448 (87%) of the customers' Schedule A deductions were disallowed.
51. The customers reported \$101,482 in Schedule C losses from a mortgage business.
52. The customers did not own or run their own mortgage business, nor did they tell Mirabella that they owned a mortgage business.
53. As a result of Mirabella's fraudulent preparation of the customers' 2005 tax return, 100% of their Schedule C deductions were disallowed.
54. The exam for tax year 2005 resulted in a tax deficiency of \$71,643.
55. Mirabella repeatedly supplied false information regarding deductions for personal and business expenses on the customers' tax returns that resulted in a fraudulent understatement of tax liability.

IRS's Investigation

56. Based on information provided by the software company he used to file tax returns and an examination of his bank account, the IRS estimates that Mirabella prepared approximately 40 returns for tax year 2006 and 58 returns for tax year 2007. The actual number of returns Mirabella prepared is unknown because he typically does not identify himself as the tax return preparer on the copy of the tax returns that he files with the IRS.
57. The IRS has examined 17 returns known to have been prepared by Mirabella. The

average additional liability per return was \$18,149. Assuming that Mirabella maintained consistency in fraudulently understating customers' tax liabilities, Mirabella's customers could have underpaid their taxes by approximately \$1,778,602 for tax years 2006 and 2007.

Count I:

Injunction Under 26 U.S.C §§ 7407 and 7408

58. The United States incorporates by reference the allegations in paragraphs 1 through 57.
59. The United States is authorized by 26 U.S.C. § 7407 to seek an injunction against any tax-return preparer who has engaged in any "fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws," or who has "engaged in any conduct subject to penalty under section 6694 or 6695." 26 U.S.C. § 7407.
60. Section 6694 penalizes tax return preparers who prepare tax returns that understate their customers' tax liabilities as a result of an unreasonable position of which the tax return preparer either knew or should have known or who willfully attempted to understate a customer's tax liability on a return or claim, or who understates their customers' tax liabilities on returns they prepare due to a reckless or intentional disregard of rules or regulations.
61. Mirabella has continually and repeatedly prepared and submitted federal tax returns that contain unrealistic, unreasonable, and frivolous positions and has willfully attempted to understate customers' correct tax liabilities, and has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694.

62. Section 6695 penalizes tax returns preparers who fail to sign a return or provide an identifying number on a return filed with the IRS.
63. Mirabella has continually and repeatedly failed to sign or provide an identifying number on federal tax returns that he has prepared and submitted, and has thus engaged in conduct subject to penalty under 26 U.S.C. § 6695.
64. Additionally, Courts are authorized under 26 U.S.C. § 7408 to issue an injunction against anyone who has engaged in conduct subject to penalty under 26 U.S.C. § 6701.
65. Section 6701 penalizes any person who prepares, or assists in the preparation, of any tax returns, with the knowledge that the tax return will understate the tax liability of another person.
66. Mirabella has continually and repeatedly prepared tax returns that understate the tax liabilities of his customers as a result of fabricated, inflated, and improper deductions for unreimbursed employee business expenses, personal expenses, charitable contributions, and other business expenses, and has thus engaged in conduct subject to penalty under 26 U.S.C. § 6701.
67. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Mirabella is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint.
68. If a return preparer's misconduct is continual and/or repeated and the court finds that a narrower injunction (*i.e.*, prohibiting specific enumerated conduct) would not be sufficient to prevent the preparer's interference with the proper administration of federal tax laws, the court may enjoin the person from further acting as a return preparer.

69. Mirabella should be permanently enjoined under 26 U.S.C. § 7407 from acting as an income tax return preparer because a more limited injunction would be insufficient to stop his interference with the proper administration of the tax laws. He should also be enjoined under 26 U.S.C. § 7408 from further engaging in conduct subject to penalty under 26 U.S.C. § 6701.

Count II:

**Injunction under 26 U.S.C. § 7402 for Unlawful Interference
with the Enforcement of the Internal Revenue Laws**

70. The United States incorporates by reference paragraphs 1 through 69.
71. Courts are authorized by 26 U.S.C. § 7402(a) to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under this statute “are in addition to and not exclusive of any and all other remedies.” 26 U.S.C. § 7402(a).
72. Mirabella has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and he is likely to continue to engage in such conduct unless enjoined.
73. Mirabella’s conduct causes irreparable injury to the United States and an injunction under 26 U.S.C. § 7402(a) is necessary and appropriate.
74. Unless Mirabella is enjoined, the IRS will have to devote substantial time and resources to examining his customers’ tax returns and liabilities. Pursuing all individual customers may be impossible given the IRS’s limited resources and Mirabella’s efforts to hide his involvement in preparing the fraudulent returns by failing to sign the tax returns that were

submitted to the IRS.

75. Unless Mirabella is enjoined, the customers relying on Mirabella's return preparation services may be subject to additional tax liabilities along with interest and penalties as a result of Mirabella's tax return preparation.
76. The Court should order injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the Plaintiff, United States of America, prays for the following relief:

- A. That the Court find that Mirabella has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701 and that injunctive relief is appropriate under 26 U.S.C. §§ 7407 and 7408 to bar Mirabella from acting as tax return preparer and from engaging in conduct subject to penalty under 26 U.S.C. § 6701;
- B. That the Court find that Mirabella has 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 him is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. §§ 7407 and 7402(a);
- C. That the Court, under 26 U.S.C. §§ 7402 and 7407, enter a permanent injunction prohibiting Mirabella and his representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with him, from directly or indirectly:
 - (1) engaging in any conduct subject to penalty under 26 U.S.C. § 6694, 6695, or 6701, including preparing any part of a return or claim for refund that

- includes an unreasonable or a willful understatement of tax;
- (2) acting as a federal tax return preparer or either directly or indirectly preparing or filing, or assisting in the preparation or filing of any federal tax return for any other person or entity;
 - (3) engaging in any other activity subject to penalty under the Internal Revenue Code; and
 - (4) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws;
- D. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring Mirabella to contact all persons and entities for whom he prepared any federal tax return or other tax-related document after January 1, 2003, and inform those persons of the entry of the Court's findings concerning the falsity of representations Mirabella made on his customers' tax returns, and that a permanent injunction has been entered against him;
- E. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring Mirabella to turn over to counsel for the United States a list of the names, addresses, e-mail addresses, phone numbers, and Social Security numbers of all individuals or entities for whom he prepared or helped to prepare any tax-related documents, including claims for refund or tax returns since January 1, 2003;
- F. That the Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and
- G. That this Court grant the United States such other relief, including costs, as is just and equitable.

Dated: August 6, 2009

Respectfully submitted,

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