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

UNITED STATES OF AMERICA, Plaintiff, v. EVELYN JOHNSTON, individually, ABACO EXECUTIVE SERVICES, INC., Defendants.	)	Civil No. **Complaint for Permanent Injunction and Other Relief**

Plaintiff, United States of America, for its complaint against Evelyn Johnston, individually, and Abaco Executive Services, Inc. (d/b/a Abaco; Abaco Financial and Tax Services; Abaco Tax Services; and Abaco Financial Tax Service)("defendants"), states as follows:

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 §§ 7402, 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) to enjoin Evelyn Johnston and Abaco Executive Services, Inc., from the following activities:

   (a) Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return, amended return or other federal tax documents or forms for any other person or entity;

   (b) Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that advises or assists taxpayers to attempt to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling, or advocating the use of false Forms 1099 or other false IRS forms based on the false claims that:

i. Taxpayers can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099 or other documents;

ii. Taxpayers can issue false Forms 1099 on behalf of a creditor and report on federal tax returns the amount on the false Form 1099 as federal income taxes withheld on their behalf; and

iii. Taxpayers have an account with the Treasury Department from which they can draw funds through a process that is often called "redemption" or "commercial redemption."

(c) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, including organizing or selling a plan or arrangement and making or furnishing a statement regarding the excludability of income or securing of any other tax benefit that defendants know or have reason to know is false or fraudulent as to any material matter;

(d) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing tax returns and other documents that understate the tax liabilities of others;

(e) Preparing their own federal income tax returns claiming income withholding and refunds based on amounts shown in Forms 1099 or other documents issued to their own creditors;

(f) Filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1040, 1040X, 1099 or any other IRS forms for themselves or others, including the notarization or signing of certificates of service or similar documents in connection with the frivolous tax returns;

(g) Representing anyone other than herself before the Internal Revenue Service;

(h) Engaging in any other conduct that is subject to penalty under the Internal Revenue Code or that interferes with the proper administration and enforcement of the internal revenue laws.

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.

Defendants

4. Evelyn Johnston resides in Marianna, Florida, in the Northern District of Florida. Venue is thus proper in this Court under 28 U.S.C. § 1391.

5. Evelyn Johnston is licensed by the IRS as an enrolled agent.

6. Evelyn Johnston is the owner and president of defendant Abaco Executive Services, Inc., a corporation doing business in Panama City, Florida, in the Northern District of Florida.

7. Evelyn Johnston and her business, Abaco Executive Services, Inc., prepare federal tax returns for others in exchange for compensation. Since 2007, defendants have prepared and filed at least 1,191 federal income tax returns (not including amended returns).

The Defendants' Tax-Fraud Scheme

8. Defendants promote a tax-fraud scheme that involves filing fraudulent federal income tax returns and other frivolous documents with the IRS on behalf of their customers.

9. Defendants fabricate federal income tax withholdings on tax returns they prepare. The fabricated tax withholding reported to the IRS on their customers' returns results in fraudulent refund claims by their customers in amounts as large as $1,060,032 per customer.

10. In support of their fraudulent refund claims, defendants prepare and file with the IRS false Forms 1040, 1040X, 1099-OID, 1096, Schedule B, and other false IRS documents.

11. Other courts have enjoined tax return preparers for promoting the very same tax schemes and for preparing the same type of bogus tax returns and supporting documentation. *See, e.g., United States v. Teresa Marty, et al.*, at: http://www.usdoj.gov/opa/pr/2009/September/09-tax-937.html; *see also United States v. Kahn*, 2004 WL 1089116, *1 (March 30, 2004 M.D. Fla.) (court held defendants in

violation of injunction that arose from defendants' promotion of abusive tax schemes including "outlandish mechanisms" such as using counterfeit bonds and checks to draw on fictitious treasury accounts supposedly in their customers' name). Other courts have condemned the tax scheme. *Ray v. Williams*, 2005 WL 697041, *5-6 (March 24, 2005 D. Or.) (in considering prison's bar on the delivery of the book "Cracking the Code, Third Edition," held that book contained fraudulent claim of "Redemptionists" that direct treasury account exists that has a balance equal to the monetary value the government places on the life of an individual); *Monroe v. Beard*, 2007 WL 2359833, *2 (Aug. 16, 2007 E.D. Pa.) (characterized Redemption as an "anti-government scheme that utilizes commercial law to harass and terrorize its targets").

12. The IRS issued a nationwide "problem alert" warning taxpayers about the very same tax scheme that defendants are promoting in this case, on October 10, 2008: *http://www.irs.gov/newsroom/article/0,,id=98129,00.html*

13. IRS Forms 1099-OID are used to report Original Issue Discount (OID) income (and any federal income tax withheld from that income). Original issue discount income refers to the difference between the discounted price at which a debt instrument is sold at issuance, and the stated redemption price at maturity. OID is generally included in a taxpayer's income as it accrues over the term of the debt instrument, whether or not the taxpayer actually receives payments from the issuer of the debt instrument. OID is treated like a payment of interest, and a party issuing a financial instrument generating OID must issue a Form 1099-OID.

14. IRS Forms Schedule B are used to report interest and dividend income, and are attached to IRS Forms 1040.

15. IRS Forms 1096 are used to transmit Forms 1099-OID (and other forms) to the IRS.

16. The frivolous IRS Forms 1099-OID submitted with the returns that defendants prepare typically show false OID income paid by a customer's creditor – usually a credit card company or a mortgage company – to the customer.

17. Some of the fraudulent Forms 1099-OID that defendants prepare and submit with returns they prepare falsely state that their customers are payees who receive OID income from their creditors.

18. Other fraudulent Forms 1099-OID that defendants prepared and filed with the IRS state that their customers were both the payer and payee of the interest income reported on the false Form 1099-OID.

19. Other fraudulent Forms 1099-OID that defendants prepared and filed with the IRS state that their customers were the payer of OID income to their creditors.

20. The Forms 1099-OID that defendants prepare and submit also falsely state that federal income taxes were withheld from some or the full amount of OID purportedly received by the customer.

21. Defendants prepare bogus tax returns reporting false income which equals or approximates the total amount of the false OID, and claim false withholding on the customer's IRS Form 1040 (or 1040X). On the returns, defendants claim huge false refunds, often exceeding $500,000. One of the returns defendants prepared for a customer in April of 2009 included a fraudulent refund claim for $1,060,132.

22. Consequently, defendants' customers fail to file correct federal income tax returns (and amended returns) and falsely claim tax refunds to which they are not entitled.

23. In some cases, defendants do not prepare IRS Forms 1099-OID and, instead, just prepare and submit a false Form Schedule B reporting false interest income from creditors and false withholding on line 62 of the return.

24. The IRS Forms Schedule B that defendants prepare and file with their customers' federal tax returns typically show the customer as the "payee" of purported interest income paid to them by a creditor.

25. The IRS Forms 1096 that defendants prepare and file with the IRS also falsely report federal income tax withheld.

26. The apparent purpose of defendants' frivolous IRS Forms 1040, 1040X, 1099-OID, 1096, and Schedule B is to request fraudulent income tax refunds. The scheme is based

in part on Johnston's absurd claim that secret accounts exist that can be accessed to pay these bogus refund claims.

27. In reality, regardless what forms are used or what they say, the defendants' scheme involves one central element. Defendants fraudulently report that income tax was withheld from their customers and then claim refunds based on those non-existent withholdings.

Examples

28. In April of 2009, defendants prepared a 2008 Form 1040 federal income tax return for Sonia Florez, who resides in Miami, Florida. On the return, defendants requested a fraudulent refund of $1,060,132, falsely claiming income tax withholding totaling $1,505,315. To support these fraudulent claims, defendants attached two bogus IRS Forms 1099-OID and a false Schedule B.

29. In October of 2008, the defendants prepared a joint 2005 Form 1040X amended federal income tax return for defendant Evelyn Johnston and her husband Blaine Johnston. The Johnstons reside in Marianna, Florida. The defendants requested a fraudulent refund of $591,679, and falsely reported $886,162 of federal income tax withholding. To support these fraudulent claims, defendants attached 9 bogus IRS Forms 1099-OID, 1096, a false Schedule B, and a revised 2005 Form 1040.

30. In 2008, the defendants also prepared and filed a 2007 Form 1040 federal income tax return for defendant Johnston's husband, Blaine Johnston. Defendants claimed a fraudulent refund for $248,679 and $362,241 in federal income tax withholding. In support of these bogus claims, defendants prepared and attached 17 fraudulent IRS Forms 1099-OID, 1096, and a Schedule B.

31. In April of 2009, the defendants prepared and filed a 2008 Form 1040 federal income tax return for Jairo Delgado, who resides in Jacksonville, Florida. Defendants claimed a fraudulent refund of $809,739 and $1,224,658 in federal income tax withholding. In support of these bogus claims, defendants prepared and attached a false Form Schedule B.

Harm Caused by Defendants' Misconduct

32. The IRS has identified at least 74 returns prepared and/or filed by the defendants in 2008 and 2009 that request refunds based on the defendants' false IRS Forms 1040, 1040X, 1099-OID, 1096, Schedule B, and other false documents. Many of the refund requests on these fraudulent returns exceed $500,000, and one return requests a refund of $1,060,132. The total amount of bogus refunds requested by defendants on those 74 returns is approximately $17.5 million, and the IRS erroneously issued $743,043 in false refunds.

33. Defendants' scheme is part of a growing trend among tax defiers to file frivolous tax returns and false Forms 1099 or other false IRS forms with the IRS and courts in an attempt to escape their federal tax obligations and steal from the U.S. Treasury.

34. In reliance on the defendants' services, their customers have failed to file proper federal income tax returns, which has either deprived the customers of proper tax refunds to which they may have been entitled, or deprived the United States of additional tax revenue owed by their customers.

35. The government has incurred the expense of conducting the investigation of defendants' fraudulent return preparation and responding to and processing the frivolous documents the defendants submitted to the IRS.

36. The false Forms 1040, 1040X, 1099-OID, 1096, Schedule B, and other IRS documents prepared and submitted by the defendants may also result in the assessment of erroneous penalties against the creditors identified in the forms for failing to timely or accurately submit the forms to the IRS.

Count I: Injunction Under 26 U.S.C. § 7407

37. The United States incorporates by reference the allegations contained in paragraphs 1 through 36.

38. Internal Revenue Code § 7407 authorizes the United States 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."

39. If a return preparer's misconduct is continual 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.

40. Defendants have continually and repeatedly prepared and filed with the IRS false and frivolous federal income tax returns (and amended returns) on behalf of their customers.

41. As a result, defendants have repeatedly and continually engaged in fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws.

42. Defendants have repeatedly and continually prepared and filed federal tax returns that understate their customers' tax liabilities as a result of unreasonable and frivolous claims and, thus, have engaged in conduct subject to penalty under 26 U.S.C. § 6694.

43. Defendants have repeatedly and continually failed to sign as preparer tax returns they have prepared for customers and, thus, have engaged in conduct subject to penalty under 26 U.S.C. § 6695(b).

44. Defendants have repeatedly and continually prepared and filed federal income tax returns (and amended returns) that understate their customers' tax liabilities as a result of defendants' willful attempts to understate their tax liabilities, and/or defendants' reckless and/or intentional disregard of internal revenue laws and regulations.

45. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, defendants are likely to continue to prepare and file false federal income tax returns and engage in other misconduct of the type described in this complaint.

46. Defendants have continually and repeatedly prepared returns that include fraudulent refund claims.

47. Defendants should be permanently enjoined under 26 U.S.C. § 7407 from acting as federal tax return preparers because a limited injunction would be insufficient to stop them from interfering with the proper administration of the tax laws.

Count II: Injunction Under 26 U.S.C. § 7408 for Violation of 26 U.S.C. §§ 6700 and 6701 and 31 U.S.C. § 330.

48. The United States incorporates by reference the allegations contained in paragraphs 1 through 47.

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

50. Section 6700 imposes a penalty on any person who organizes or participates in the sale of a plan or arrangement and in so doing makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement which that person knows or has reason to know is false or fraudulent as to any material matter.

51. The defendants organized and participated in the sale of a plan or arrangement and, in doing so, made false and fraudulent statements with respect to the tax benefits of participating in the plan or arrangement which defendants knew or had reason to know were false.

52. As a result, defendants engaged in conduct subject to penalty under 26 U.S.C. § 6700.

53. Section 6701 imposes a penalty on any person who aids or assists in, procures, or advises with respect to, the preparation of any portion of a return, affidavit, claim, or other document, who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

54. Defendants prepared and aided or assisted in the preparation and filing of federal income tax returns and other documents that resulted in the understatement of their customers' tax liabilities.

55. Defendants knew or had reason to believe that the fraudulent documents they prepared and filed with the IRS – including bogus IRS Forms 1040, Forms 1040X, Forms 1099-OID, Forms 1096, and Forms Schedule B – would drastically understate their customers' federal income tax liabilities.

56. As a result, defendants have engaged in conduct subject to penalty under 26 U.S.C. § 6701.

57. Injunctive relief is appropriate to prevent recurrence of defendants' penalty conduct.

58. Under 26 U.S.C. § 7408(c)(2), courts may enjoin persons who violate regulations pursuant to 31 U.S.C. § 330, which authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to this authority, the IRS published regulations in sections 10.34 and 10.51 of Circular 230, which prohibit tax practitioners from advising clients to take frivolous positions on documents submitted to the IRS, and from helping clients unlawfully evade taxes.

59. Johnston has continually and repeatedly violated the standards set forth in Circular 230. Injunctive relief, therefore, is appropriate to prevent the recurrence of this conduct by Johnston.

Count III: Injunction Under 26 U.S.C. § 7402

60. The United States incorporates by reference the allegations contained in paragraphs 1 through 59.

61. 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 those laws.

62. Defendants substantially interfere with the enforcement of the internal revenue laws by promoting their "redemption" or "commercial redemption" tax-fraud scheme and filing frivolous federal tax returns and other documents on behalf of their customers.

63. As a result of the defendants' misconduct, their customers fail to file proper tax returns, erroneous refunds for hundreds of thousands of dollars have been issued to their customers, and the customers are potentially liable for substantial penalties.

64. Defendants' conduct causes irreparable harm to the United States and to the public for which there is no adequate remedy at law.

65. Unless enjoined by this Court, the defendants will continue to promote and administer this tax-fraud scheme.

66. The United States is entitled to injunctive relief under I.R.C. § 7402(a) to prevent the recurrence of this misconduct.

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

A. That the Court find that defendants Evelyn Johnston and Abaco Executive Services, Inc., have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700, and 6701, and that injunctive relief is appropriate under 26 U.S.C. §§ 7402, 7407, and 7408 to bar defendants from acting as tax return preparers, and from engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701;

B. That the Court find that defendants have engaged in conduct that substantially interferes with the enforcement and administration of the internal revenue laws, and that injunctive relief against defendants is appropriate to prevent the recurrence of that misconduct 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 permanently barring defendants from acting as federal tax return preparers and from preparing or filing federal tax returns or forms for others, from representing others before the IRS, and from advising anyone concerning federal tax matters;

D. That the Court, under 26 U.S.C. §§ 7402 and 7407, enter a permanent injunction prohibiting defendants Abaco Executive Services, Inc., Johnston, and her representatives, agents, servants, employees, attorneys, independent contractors, anyone in active concert or participation with them, from directly or indirectly;

(1) Preparing or filing, or assisting in, or directing the preparation or filing of any federal income tax return, amended return, IRS Form 1099, 1096, Schedule B, or any other related documents or forms for any other person or entity;

(2) Engaging in activity subject to penalty under 26 U.S.C. §§ 6694 or 6695;

(3) Engaging in any other activity subject to penalty under the Internal Revenue Code; and

(4) Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

E. That this Court, under 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction prohibiting, Abaco Executive Services, Inc., Johnston, and her representatives, agents, servants, employees, and anyone in active concert or participation with her, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

(1) Organizing or selling tax shelters, plans or arrangements that advise or assist taxpayers to attempt to evade the assessment or collection of such taxpayers' correct federal tax;

(2) Engaging in any other activity subject to penalty under 26 U.S.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludability of income or securing of any other tax benefit by participating in the plan that defendants know or have reason to know is false or fraudulent as to any material matter;

(3) Engaging in any activity subject to penalty under 26 U.S.C. § 6701; and

(4) Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that advises or encourages taxpayers to attempt to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling, or advocating the use of the "commercial redemption" theory and false Forms 1099-OID based on the false claims that:

i. Taxpayers can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099 or other documents;

ii. Taxpayers can issue false Forms 1099-OID on behalf of a creditor and report the amount on the false Form 1099 as federal income taxes withheld on their behalf; and

iii. Taxpayers have an account with the Treasury Department from which they can draw funds through a process that is often called "redemption" or "commercial redemption."

F. That this Court under 26 U.S.C. § 7402, enter a permanent injunction prohibiting defendants from preparing their own federal income tax returns claiming false income tax withholding and refunds, whether or not they are based on amounts shown in false Forms 1099-OID issued to her creditors and false Forms Schedule B;

G. That this Court under 26 U.S.C. § 7402, enter a permanent injunction prohibiting defendants from filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1040, Forms 1040X, Forms 1099, Forms 1096, Schedule B, or any other IRS documents for themselves or others;

H. That this Court, under 26 U.S.C. § 7402, enter an injunction requiring defendants to contact by mail (and also by e-mail, if an address is known) all persons who have purchased any products, services or advice associated with the false or fraudulent tax scheme described in this complaint, enclosing a copy of the permanent injunction against defendants;

J. That this Court, under 26 U.S.C. § 7402, order defendants to provide to counsel for the United States a list of all persons for whom they have prepared federal tax returns, and who have purchased any products, services or advice from defendants in the past three years;

K. That this Court allow the government full post-judgment discovery to monitor defendants' compliance with the injunction; and

L. That this Court grant the United States such other and further relief as the Court deems just and appropriate.

Date: October 27, 2009

Respectfully submitted,

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