

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

APR 14 2010

JAMES N. HATTEN, CLERK  
By: *[Signature]* Deputy Clerk

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SALOUM A. NJIE and MIAAS )  
 ASSOCIATES, LLC, )  
 )  
 Defendants. )

Civil No.

1 10-CV-1107

COMPLAINT FOR PERMANENT INJUNCTION

The plaintiff, the United States of America, files this complaint for permanent injunction and alleges as follows:

1. This is a civil action brought by the United States of America pursuant to 26 U.S.C. §§ 7402(a) and 7407 to permanently enjoin Defendants Saloum A Njie and MIAAS Associates, LLC, from:

- a. Preparing, filing or assisting in the preparation or filing of any federal tax return for any other person or entity;
- b. Providing any tax advice or tax services for compensation, including preparing or filing returns, providing consultative services, or representing customers;
- c. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695(g); and

2010 APR 14 11:00 AM

d. Engaging in any other conduct that interferes with the proper administration or enforcement of the internal revenue laws through the preparation or filing of false tax returns.

#### JURISDICTION AND VENUE

2. This action has been authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of Treasury, and commenced at the direction of the Attorney General of the United States, pursuant to the provisions of 26 U.S.C. §§ 7401 and 7407.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7407.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 and 26 U.S.C. § 7407 because defendants reside in and have their principal place of business within this district.

#### DEFENDANTS

5. Defendant Saloum A. Njie resides in Lilburn, Georgia. Njie is a paid tax-return preparer who prepares or assists in the preparation of federal income tax returns for customers. At all relevant times, Njie has provided these services through Defendant MIAAS, LLC (“MIAAS”).

6. MIAAS is a single member limited liability company organized by Njie under the laws of the State of Georgia. MIAAS maintains its principal place of business at 250 Auburn Street, Suite 502, Atlanta, Georgia.

7. Njie is a Certified Public Accountant with significant knowledge of the internal revenue laws. In 1993, Njie received a Bachelor of Science degree in accounting from Georgia

State University. Njie then worked as a corporate accountant with GTE and became a certified public accountant in 1995. Drawing on his education and experience, Njie started MIAAS in 1998, which specializes in the preparation of tax returns. Njie keeps up with yearly tax law changes by attending continuing professional education courses and seminars.

DEFENDANTS' CONTINUOUS VIOLATIONS OF THE INTERNAL REVENUE LAWS

8. Since at least 2004, Defendants have continuously prepared tax returns containing material misrepresentations of fact, which Defendants knew or should have known were false. In particular, Defendants routinely prepare returns that either claim the earned income tax credit ("EITC") for taxpayers who do not qualify for the credit or overstate the credit to which the taxpayer is entitled. As a result of these misrepresentations, Defendants have systematically under-reported their customers' tax liabilities and increased their customer's claims for refunds.

9. The EITC is a refundable tax credit available to certain low-income individuals. Claiming an EITC can reduce a taxpayer's federal tax liability below zero, entitling the taxpayer to a refund from the United States Treasury. The requirements for claiming an EITC are located in 26 U.S.C. § 32.

10. The amount of the credit depends on a variety of factors, including the individual's filing status, annual wages, and the number of dependents for which the taxpayer is responsible. Generally, an individual can claim a larger EITC by claiming at least one qualifying child. A qualifying child must meet certain relationship, age, support, and residency requirements.

11. Because of the potential for abuse in claiming the EITC, Congress has authorized the Secretary of the Treasury to impose "due diligence" requirements on federal income tax

return preparers claiming the EITC for their clients. These “due diligence” requirements – which are set forth in 26 C.F.R. § 1.6695-2 – obligate the return preparer to obtain specific information from the client, and to question the client to ensure that he/she is entitled to the EITC. Federal regulations require return preparers to document their compliance with these requirements, and retain that documentation for three years.

12. Between 2006 and 2009, an overwhelming number of the returns prepared by Defendants – 92% – claimed refunds. Similarly, more than 60% of the returns prepared by Defendants during this period included a claim for the EITC.

13. To date, the IRS has audited 101 returns prepared by Njie and determined that the EITC was improperly claimed on more than 87% of those returns.

14. As the numbers set forth above suggest, Defendants routinely prepare false and/or fraudulent returns that improperly claim the EITC or overstate the amount of credit allowed. Defendants typically do so by falsely reporting that their customers have one or more qualifying children.

15. In some instances, Defendants have apparently misled their customers regarding the requirements for claiming a qualifying child.

16. For example, Defendants prepared the 2008 federal income tax return for Abdourahman Ceesay. During 2008 Ceesay had paid for his nephew to attend nursery school in Gambia, where the child lived with his mother. Although Defendants were aware that the child had lived in Gambia with his mother for most of the tax year, and therefore did not meet the residency requirement for a qualifying child, Defendants suggested to Ceesay that he claim his nephew as a qualifying child on his 2008 taxes. Defendants did not inform Ceesay of the

requirements for a qualifying child, and misled him to believe that he could claim his nephew as a qualifying child despite the fact that the child had lived outside of the United States for most of the year. As a result, the 2008 return prepared by Defendants falsely identified Ceesay's nephew as a qualifying child and overstated the EITC to which Ceesay was entitled.

17. On other occasions, Defendants have willfully failed to exercise due diligence to determine whether their customers are entitled to the EITC and, consequently, prepared returns which Defendants should have known were false.

18. For example, Defendants prepared the 2007 federal income tax return for Barry Oumar. On Oumar's return, Defendants reported that he had two qualifying children for the 2007 tax year. When the IRS requested information from Oumar concerning these qualifying children, however, they were informed that the children were not related to Oumar and were actually his girlfriend's kids. Because the children did not satisfy the relationship test, Oumar was not permitted to claim them as qualifying children, and the IRS disallowed his claim for the EITC. Had Defendants exercised due diligence by questioning Oumar regarding his relationship to the children and asking for supporting documentation, Defendants would have known that the return they prepared for Oumar contained a false claim for the EITC.

19. Since at least 2006, the IRS has made repeated efforts to compel Defendants to stop preparing returns containing false and/or fraudulent claims for the EITC. This has included repeated investigations of Defendants' tax preparation practices and the imposition of monetary penalties for failing to exercise due diligence when preparing returns claiming the EITC. These efforts have failed to deter Defendants, who continue to routinely prepare false and/or fraudulent returns.

20. In October 2006, the IRS conducted an investigation of Defendants' tax preparation practices. This involved reviewing the files of 125 of Defendants' customers and interviewing MIAAS' employees, including Njie.

21. Although Njie demonstrated that he was aware of the requirements for claiming the EITC and his obligations to exercise due diligence, the IRS found that Defendants had routinely failed to exercise due diligence to determine whether their customers were entitled to claim the EITC.

22. For example, the IRS reviewed the customer file for Angel Statum. Statum claimed to have a foster child that was his same age. Although Defendants reported that this "foster child" was a qualifying child for EITC purposes, there were no records in the file supporting Statum's claim that the individual was actually a foster child. Accordingly, the IRS determined that Defendants had failed to be diligent in determining whether this customer was eligible for the EITC and assessed a penalty against Njie pursuant to 26 U.S.C. § 6995(g).

23. In total, the IRS assessed penalties against Defendants for failing to be diligent in determining eligibility for the EITC with respect to 32 of the 125 customer files examined during this investigation.

24. In January 2008, the IRS conducted a second investigation of Defendants' tax preparation practices. Again, the IRS found that Defendants had routinely failed to exercise due diligence to determine whether their customers were entitled to claim the EITC.

25. As with the previous investigation, the IRS found several instances where Defendants had failed to obtain documentation supporting their customers' claim that they had a qualifying child. Additionally, in some files, there was a discrepancy between the relationship of

the taxpayer to the alleged qualifying child reported on the return and the relationship identified on the questionnaire completed by the customer. Finally, some files reflected that Defendants' customers had inexplicably claimed different qualifying children from one year to the next.

26. Aside from issues involving qualifying children, the IRS also found that Defendants had prepared many returns reflecting income from sole proprietorships without any expenses. This income, reported on a Schedule C, is suspicious because it increases the amount of a taxpayer's "earned income," and consequently, can increase the amount of the EITC to which they are entitled. In an interview with the IRS, Njie stated that he would never prepare a Schedule C reflecting income and no expenses.

27. In sum, the January 2008 investigation found that, rather than having improved their due diligence practices after the 2006 investigation, Defendants' violations had become more flagrant. Indeed, the IRS assessed penalties against Defendants for failing to be diligent in determining eligibility for the EITC with respect to 87 of the 99 customer files reviewed in the January 2008 investigation.

28. In August 2009, the IRS conducted a third investigation of Defendants' tax preparation practices. As with the investigations in August 2006 and January 2008, the IRS again found that Defendants had routinely failed to exercise due diligence to determine whether their customers were entitled to claim the EITC.

29. Again, problems identified by the IRS included failure to obtain documentation supporting their customers' claims that they had a qualifying child and discrepancies between the relationship of the taxpayer to the alleged qualifying child reported on the return and the relationship identified on the questionnaire completed by the customer. The IRS also found that

Defendants had continued to prepare returns accompanied by a Schedule C that reported gross income but no corresponding expenses.

30. In this third investigation, the IRS determined that Defendants had failed to be diligent in determining eligibility for the EITC with respect to all 10 of the customer files reviewed.

#### HARM TO THE UNITED STATES

31. Defendants' actions cause harm to the United States and to the public by unlawfully understating their customers' tax liabilities.

32. Of the 101 returns prepared by Njie between 2006 and 2009 that have been audited, more than 87% percent understated the correct tax liability. The average understatement of income tax liability is \$3,619 per return, and is primarily attributable to improper or inflated EITC claims. Defendants prepared 4,694 income tax returns for tax years 2006 through 2009, and the IRS is still examining more of these returns. But based on the average deficiency of the returns examined to date, the IRS projects that the total tax loss from the returns prepared by Defendants could exceed \$1,000,000.

#### COUNT I: INJUNCTION UNDER 26 U.S.C. § 7407

33. 26 U.S.C. § 7407 authorizes a court to enjoin an income tax return preparer from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

34. Section 6694(a) penalizes a tax return preparer if the preparer prepares a

return or claim for refund that includes an understatement of liability based on an unreasonable position which lacks substantial authority, and the preparer knew or should have known of the position.

35. Section 6694(b) penalizes a tax return preparer who prepares a return or claim with an understatement of liability in a willful attempt to understate the liability or with a reckless and intentional disregard of rules or regulations.

36. Section 6695(g) penalizes a tax return preparer who fails to comply with the due diligence requirements in determining eligibility for, or the amount of, the Earned Income Tax Credit.

37. Defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(a) by preparing false and/or fraudulent returns claiming the EITC where either no such credit is due or the request for the credit is overstated. In particular, Defendants have routinely reported that their customers have a qualifying child where Defendants knew or should have known that the claim was false. It appears that Defendants have also prepared false and/or fraudulent Schedule C's, reporting income which Defendants knew or should have known was not earned by the taxpayer. Defendants have thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).

38. Defendants continually and repeatedly prepare returns for customers with false entries in a willful attempt to understate the customer's liability or with a reckless and intentional disregard of rules and regulations. Defendants have thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(b).

39. Defendants knew, or had reason to know, that information used in determining their customers' eligibility for, or the amount of, the EITC was incorrect. Defendants failed to make reasonable inquiries regarding information that appeared to be incorrect, inconsistent and/or incomplete. In that regard, Defendants failed to inquire whether their customers were meeting the relationship, age, support, and residency requirements for claiming a qualifying child. Likewise, Defendants have failed to inquire as to why some of their customers report Schedule C income with no expenses. Defendants have thus engaged in conduct subject to penalty under 26 U.S.C. § 6695(g).

40. Defendants have continually and repeatedly engaged in conduct that violates 26 U.S.C. §§ 6694 and 6695(g). An injunction merely prohibiting Defendants from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695(g) would not be sufficient to prevent their interference with the proper administration of the tax laws. The fact that Defendants' violations have continued despite repeated investigations by the IRS and the imposition of monetary penalties demonstrates that a narrow injunction would not prevent future violations. Additionally, failure to permanently enjoin Defendants would require the IRS to spend additional resources to uncover all of Defendants' future schemes. Accordingly, only a permanent injunction is sufficient to prevent future harm. Defendants should be permanently enjoined from acting as tax return preparers.

COUNT II: INJUNCTION UNDER 26 U.S.C. § 7402

41. 26 U.S.C. § 7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

42. Defendants, through their actions as described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

43. Defendants' conduct causes irreparable harm to the United States and their customers.

44. Defendants are causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

45. If Defendants' are not enjoined, they are likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws. The IRS will have to devote substantial time and resources auditing Defendants' clients individually to detect future deficient returns. The detection and audit of erroneous EIC refunds claims filed by Defendants' customers will place a significant burden on IRS resources.

46. The United States is entitled to injunctive relief under 26 U.S.C. § 7402.

WHEREFORE, the United States prays for the following relief:

A. That the Court find that Defendants Saloum A. Njie and MIAAS Associates, LLC have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695(g), and that, pursuant to 26 U.S.C. § 7407, an injunction prohibiting such conduct would not be sufficient to prevent Defendants' interference with the proper administration of the tax laws and that Defendants should be permanently enjoined from acting as tax return preparers;

B. That the Court find that Defendants are interfering with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a) and the Court's inherent equity powers;

C. That the Court enter a permanent injunction under 26 U.S.C. §§ 7402(a) and 7407 prohibiting Defendants, under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from directly or indirectly:

1. Preparing, filing or assisting in the preparation or filing of any federal tax return for any other person or entity;
2. Providing any tax advice or tax services for compensation, including preparing or filing returns, providing consultative services, or representing customers in connection with any matter before the Internal Revenue Service;
3. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695;  
or
4. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation or filing of false tax returns;

D. That the Court, pursuant to 26 U.S.C. § 7402(a), require Defendants, at their own expense, to send by certified mail, return receipt requested, a copy of the final injunction entered against them in this action to each person for whom they, or anyone at their direction or in their employ, prepared federal income tax returns or any other federal tax forms after January 1, 2005.

E. That the Court require Defendants and anyone who prepared tax returns at the direction of or in the employ of Defendants, to turn over to the United States copies of

all returns or claims for refund that they prepared (or helped prepare) for customers after January 1, 2005;

F. That the Court require Defendants and anyone who prepared tax returns at the direction of or in the employ of Defendants, to turn over to the United States a list with the name, address, telephone number, e-mail address (if known), and social security number or other taxpayer identification number of each customer for whom they prepared returns or claims for refund after January 1, 2005;

G. That the Court require that Defendants, within forty-five (45) days of entry of the final injunction in this action, to file a sworn statement with the Court evidencing their compliance with the foregoing directives; and

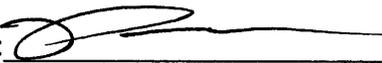
H. That the Court require Defendants to keep records of their compliance with the foregoing directives, which may be produced to the Court, if requested, or to the United States pursuant to paragraph J, below;

I. That the Court enter an order allowing the United States to monitor Defendants' compliance with this injunction, and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

J. That the Court grant the United States such other and further relief as the Court deems appropriate.

Respectfully submitted,

JOHN A. DICICCO  
Acting Assistant Attorney General

By: 

PATRICK J. HANNON  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 14198  
Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 305-7921  
Fax: (202) 514-9868  
patrick.j.hannon@usdoj.gov

Of Counsel:

SALLY QUILLIAN YATES  
United States Attorney