

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:10-cv-8114
)	
MARTHA A. JONES,)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, the United States of America, alleges against Defendant, Martha A. Jones, as follows:

1. This is a civil action brought by the United States under sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (“IRC”) to enjoin Defendant Martha A. Jones and anyone in active concert or participation with her, from:

- (a) acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than herself;
- (b) preparing or assisting in preparing federal tax returns that she knows or reasonably should have known would result in an understatement of tax liability or the overstatement of federal tax refund(s) as penalized by IRC § 6694;
- (c) engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6701, or any other penalty provision in the IRC; and
- (d) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. 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, pursuant to the provisions of IRC §§ 7402, 7407, and 7408.

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

4. Venue is proper in this Court under 28 U.S.C. § 1391 because Martha A. Jones resides in Chicago, Illinois, and a substantial part of the actions giving rise to this suit took place in this district.

Defendant's Activities

5. Jones is a commercial tax return preparer doing business at 12538 South Indiana Ave., Chicago, IL 60628. Jones has an associate degree and is now retired, except for preparing tax returns seasonally, an activity she refers to as a hobby.

6. Jones claims that she prepares between 50 to 100 tax returns annually. However, the returns prepared by Jones frequently do not indicate her identity as the paid tax return preparer through either Jones' social security number or a preparer tax identification number. Jones frequently fails to sign tax returns that she prepares as the paid preparer. The IRS identified tax returns with a pattern of unusual (and improper) claims for contribution carryovers in the precise amount of \$500 and examined these returns. The taxpayers whose returns the IRS examined identified Jones as the paid preparer, and Jones has been identified by other customers whose returns have been examined as the preparer of tax returns that do not contain her name or signature as the paid preparer.

7. Because Jones does not sign returns that she prepares or otherwise identify herself as the paid preparer, it is difficult to identify the actual number of returns that she prepares. Based on available information, including statements from Jones' customers identifying her as the paid preparer, the IRS estimates that Jones prepares around 270 tax returns annually.

8. Despite being informed by the IRS in 2008 that Jones, as paid preparer, is required to sign the federal tax returns that she prepares, Jones continues to fail to sign federal tax returns that she prepares.

9. The IRS examined 56 federal tax returns that Jones' customers identified as being prepared by Jones for tax years 2005 to 2008. The examination revealed a 100% error rate on these returns with an average tax deficiency of \$4,679.

10. Assuming that Jones prepares 270 returns annually, with an average tax deficiency of \$4,679 per return, Jones' tax return preparation resulted in the estimated loss of over \$5,000,000 in revenue to the United States from 2005 to 2008. Based on Jones' conservative claim that she prepared only 50 to 100 returns annually from 2005 to 2008, the United States' estimated lost revenue over this period is between \$935,000 and \$1,871,600.

Charitable Contribution and Employee Business Expense Fraud

11. Jones often prepares tax returns for customers on which she fabricates or fraudulently inflates the amount of a customer's charitable contribution. Section 170 of the Internal Revenue Code governs charitable contributions. Section 170(a) provides that qualifying charitable contributions, as defined by I.R.C. § 170(c), are allowable only if verified. Jones prepares returns for clients that report a fraudulently inflated amount of cash contributions, frequently in the identical amount of \$250. Of the 56 Jones-prepared returns that the IRS examined, at least 46

claimed bogus deductions for charitable cash contributions in the amount of \$250.

12. Jones also prepares returns on which she claims bogus deductions for non-cash charitable contributions. Of the 56 Jones-prepared returns that the IRS examined, nearly every return reported bogus deductions, frequently for an amount at or around \$7,500, for charitable non-cash contributions.

13. Jones also frequently prepares returns for customers that claim deductions for fabricated or fraudulently inflated unreimbursed business expenses, and makes false claims for purported business expenses that do not qualify under the Internal Revenue Code. Section 162 of the Code governs trade or business expenses. IRS Publication 529 provides examples of qualifying business expenses, including “Union dues and expenses” and “Work clothes and uniforms if required and not suitable for everyday use.” *See* IRS Publication 529 (2009) (available online at: <http://www.irs.gov/publications/p529/ar02.html>). Publication 529 also provides examples of expenses that do not qualify as business expenses, including “Commuting expenses,” “Lunches with co-workers,” “Meals while working late,” and “Personal, living, or family expenses.”

14. For example, on the 2006 tax return of customers Humberto and Dolores Hernandez, Jones improperly claimed that Hernandez had \$250 in cash charitable contributions and \$9,000 in non-cash charitable contributions. Jones did not ask the Hernandezes whether they made any charitable contributions in 2006. The Hernandezes did not provide these amounts to Jones, nor did they provide any supporting documentation to Jones. The Hernandezes were unaware that Jones reported these contributions on the return, because after preparing the return, Jones did not review the return with the Hernandezes or explain anything on the return. In fact, Jones merely

told the Hernandezes the amount of their refund and instructed them to sign and mail the return. The Hernandezes followed her instructions and did not review the return before mailing it to the IRS.

15. Jones also falsely claimed \$23,620 on the Hernandezes' 2006 return as unreimbursed employee business expenses for purported business-related mileage that Hernandez drove, and purported business-related tolls that Hernandez paid. When preparing the return, Jones asked Humberto Hernandez, employed as a carpenter, how many miles he drove each day, and asked about the clothes that he bought for work. Jones never asked for any toll or clothing receipts, nor did Jones explain to Hernandez what clothing purchases qualified as deductible unreimbursed business expenses, or what mileage and tolls constituted deductible unreimbursed business expenses. Jones wrote on the return that Hernandez drove "100 to 250 miles per day," for an estimated 52,000 miles driven for business in 2006. Jones provided no supporting documentation or calculation.

16. On the 2006 and 2007 tax returns of customer Raul Flores, a delivery driver, Jones included bogus non-cash charitable deductions in the amounts of \$7,550 and \$7,500, respectively. Flores, however, was unaware of Jones' claiming these deductions on his return, did not make any such contributions, and never provided supporting documents for contributions to Jones. English is Flores' second language and he relied on Jones to correctly prepare his return, and mailed in the return per Jones' instructions without Jones reviewing the return with him.

17. Similarly, on the 2006 and 2007 tax returns of customers Jose and Karina Vasquez, Jones claimed bogus non-cash charitable deductions in the amounts of \$7,500 and \$7,435,

respectively. Jones never requested documents regarding such expenses, and the Vasquezes never provided these amounts to Jones. Indeed, the Vazquezes did not make any non-cash contributions in 2006 or 2007.

18. Jones also claimed improper business expense deductions on the Vasquezes' 2006 and 2007 tax returns in the amounts of \$27,537 and \$26,737, respectively, purportedly related to Jose Vasquez's occupation as a truck driver. However, the only unreimbursed business expense that Vazquez had each year was \$400 for steel-toed boots. Jones never asked Vazquez about his business expenses and never explained to Vazquez the rules regarding what qualifies as business expenses. Vazquez never provided any documentation for the claimed business expenses to Jones, and Jones never asked for such documentation. Rather, Jones simply fabricated these amounts to improperly reduce Vazquez's tax liabilities for 2006 and 2007.

19. On the 2006 return of customer Emiliano and Conseulo Chavez, who are both employed at an industrial chemical plant, Jones falsely claimed that Emiliano Chavez had \$8,366 in business vehicle expenses. Chavez did not provide this amount or any supporting documentation to Jones. Chavez does not know how Jones came up with this amount. As industrial plant workers, the Chavezes did not have business vehicle expenses, and their only vehicle expenses were for commuting to and from the plant, which does not qualify as an eligible business expense. The Chavezes did not provide any information regarding their commuting expenses to Jones. The Chavezes were not aware that Jones included the bogus business expense deduction on their return, because Jones did not review the prepared return with the Chavezes, but simply instructed them to sign it and send it to the IRS. The Chavezes followed Jones' instructions and did not review the return before mailing it to the IRS.

Fraudulent Claims for Carryover Charitable Non-Cash Contributions

20. In addition to falsely inflating her customers' charitable contributions, Jones also claimed non-cash charitable contribution carryovers of \$500 on almost all of the Jones-prepared returns that the IRS examined. IRS Publication 526 discusses non-cash contribution carryovers where such a deduction is limited in a previous year. *See* IRS Publication 526 (2009) (available online at: http://www.irs.gov/publications/p526/ar02.html#en_US_publink1000229693). A contribution carryover cannot occur where a taxpayer recognizes his or her full non-cash charitable contribution deduction in the prior year. Jones falsely claims non-cash charitable contribution deductions in one year, then brazenly and fraudulently claims a \$500 carryover the next year, a "double-dipping" of tax fraud. Jones has no basis for claiming a \$500 carryover on nearly every return that she prepares. This bizarre (and improper) claim on her customers' returns, along with customer testimony, enabled the IRS to link Jones to the preparation of her customers' fraudulent tax returns.

21. Of the 56 Jones-prepared returns that the IRS examined, the IRS has identified at least 50 returns on which Jones claimed precisely \$500 in improper carryover charitable non-cash contributions.

22. For example, on the 2006 and 2007 tax returns of customer Raul Flores, Jones claimed bogus non-cash contributions of \$7,550 and \$7,500 (as described in paragraph 16), then claimed improper non-cash charitable contribution carryovers of \$500 each year. Jones had no basis for the original non-cash contribution, much less the bogus \$500 carryovers.

23. Similarly, on the 2006 and 2007 tax returns of customers Jose and Karina Vasquez, Jones claimed bogus non-cash charitable deductions in the amounts of \$7,500 and \$7,435 (as

described in paragraph 17), and falsely reported non-cash charitable contribution carryovers of \$500 each year. Jones had no basis for the original non-cash contribution, much less the bogus \$500 carryovers.

Improper Claims for Non-Qualifying Charitable Contributions

24. Jones also claimed charitable contributions for her customers for expenses that do not qualify as deductible contributions under IRC § 170(c). For example, Jones often claimed these bogus deductions when the customer gave money to relatives, which does not qualify as a charitable contribution. IRS Publication 526 provides examples of contributions that do not qualify as charitable contributions and cannot be deducted, including a “contribution to a specific individual.” *See* IRS Publication 526 (2009) (available online at: http://www.irs.gov/publications/p526/ar02.html#en_US_publink1000229693).

25. For example, on the 2006 and 2007 tax returns of customers Alejandro Vazquez and Karen Nevarez, Jones claimed bogus deductions for charitable contributions based, in part, on Western Union receipts showing that Vazquez sent money to his mother in Mexico during these years. These “contributions” were, in actuality, non-deductible gifts made to Vazquez’s mother. Vazquez was not familiar with the law concerning contributions, and Jones did not explain to him how she calculated the charitable deduction amount. Jones did not review the return with Vazquez and Nevarez, but simply told them the amount of their refund and instructed them to sign and mail the return to the IRS.

Failure to Comply with IRS Request for Information under IRC § 6107(b)

26. On April 7, 2010, the IRS requested Jones to provide it with copies of returns or claims, or a list of all returns and claims, that Jones prepared from January 1, 2008 through April

5, 2010. Jones, however, did not comply with the IRS's request because she did not retain such records as required by IRC § 6107(b). Jones' failure to retain copies of returns or claims or a list of all returns that she prepared violates IRC § 6695(d).

Harm Caused by Jones

27. Jones' customers have been harmed because they paid Jones fees to prepare proper tax returns, but Jones prepared returns that substantially understated their correct tax liabilities. Many customers now face large income tax deficiencies and may be liable for sizeable penalties and interest.

28. Jones' conduct harms the United States because her customers are under-reporting and under-paying their correct tax liabilities. The IRS has identified 56 fraudulent federal income tax returns (of a sample of 56 that were examined) that Jones prepared for tax years 2005 through 2008, with a total of \$262,033 in lost revenue (an average of over \$4,679 per return) based on false claims and deductions.

29. In addition to the direct harm caused by preparing tax returns that understate customers' tax liabilities, Jones' activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

30. Jones further harms the United States because the Internal Revenue Service must devote its limited resources to identifying Jones' customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties.

Count I Injunction under IRC § 7407

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

30.

32. Section 7407 of the IRC authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under IRC § 6694 or § 6695, or 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 further 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 tax return preparer.

33. Jones has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by preparing federal income tax returns that understate her customers' liabilities based on unrealistic, frivolous, and reckless positions.

34. Jones has engaged in conduct subject to penalty under IRC § 6695 by not complying with the IRS's request pursuant to IRC § 6107(b) that Jones provide to the IRS a customer list or copies of all federal tax returns prepared by Jones from January 1, 2008 through April 5, 2010.

35. Jones' continual and repeated violations of IRC §§ 6694 and 6695 fall within IRC § 7407(b)(1)(A) and (D), and thus are subject to an injunction under IRC § 7407.

36. If she is not enjoined, Jones is likely to continue to prepare and file false and fraudulent tax returns.

37. Jones' continual and repeated conduct subject to an injunction under IRC

§ 7407, including her continual and repeated misapplication of expenses and deductions, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Jones' interference with the proper administration of the internal revenue laws. Thus, she should be permanently barred from acting as a return preparer.

Count II
Injunction under IRC § 7408

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

39. Section 7408 of the 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.

40. Section 6701(a) of the 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 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.

41. Jones prepares federal tax returns for customers that she knows will understate their correct tax liabilities, because Jones knowingly prepares returns claiming improper expenses and deductions. Jones' conduct is thus subject to a penalty under IRC § 6701.

42. If the Court does not enjoin Jones, she is likely to continue to engage in conduct subject to penalty under IRC § 6701. Jones' preparation of returns claiming improper expenses and deductions is widespread over many customers and tax years. Injunctive relief is therefore appropriate under IRC § 7408.

Count III
Injunction under IRC § 7402(a)
Necessary to Enforce the Internal Revenue Laws

43. The United States hereby incorporates by reference the allegations in paragraphs 1 through 42.

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

45. Jones, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

46. Unless enjoined, Jones is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Jones 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.

47. While the United States will suffer irreparable injury if Jones is not enjoined, Jones will not be harmed by being compelled to obey the law.

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

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

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

A. That the Court find that Martha Jones has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 and § 6695, and has continually and repeatedly engaged in other fraudulent or 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;

B. That the Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting Martha Jones from acting as a federal tax return preparer;

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

D. That the Court find that Martha Jones 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);

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Martha Jones, and all those in active concert or participation with her, from:

- (1) acting as a federal tax return preparer, or assisting in or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than herself, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- (2) understating customers' liabilities as prohibited by IRC § 6694;
- (3) engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6701, or any other penalty provision in the IRC; and
- (4) engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme.

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an order requiring

Martha Jones to contact, within fifteen days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom she prepared federal tax returns or claims for a refund for tax years 2005 through 2009 to inform them of the permanent injunction entered against her;

G. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an order requiring Martha Jones to produce to counsel for the United States, within fifteen days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom she prepared federal tax returns or claims for a refund for tax years 2005 through 2009;

H. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Martha Jones to provide a copy of the Court's order to all of Jones' principals, officers, managers, employees, and independent contractors within fifteen days of the Court's order, and provide to counsel for the United States within 30 days a signed and dated acknowledgment of receipt of the Court's order for each person whom Jones provided a copy of the Court's order;

I. That the Court retain jurisdiction over Martha Jones and over this action to enforce any permanent injunction entered against her;

J. That the United States be entitled to conduct discovery to monitor Martha Jones' compliance with the terms of any permanent injunction entered against her; and

K. That the Court grant the United States such other and further relief, including costs, as is just and reasonable.

DATED: December 22, 2010

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