

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil No. 4:11-cv-458
v.)	
)	
CHRISTOPHER J. HELTON and)	
MARCIA A. JOHNSON,)	
individually, and d/b/a M.C. Tax)	
Service; M.C. Tax Interprise; M.J.)	
Tax Service,)	

Defendants.

ORDER GRANTING UNITED STATES' MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT OF PERMANENT INJUNCTION

Upon motion by the plaintiff, United States of America, and based on the evidence presented in that motion, default judgment is hereby entered against Marcia A. Johnson, individually and doing business as M.C. Tax Service, M.C. Tax Interprise, and M.J. Tax Service ("Johnson"). The Court finds and orders as follows:

Standard for Default Judgment and Permanent Injunction

Rule 55(b)(2) of the Federal Rules of Civil Procedure allows the Court in its discretion to enter a judgment of default when the party entitled to the judgment applies to the court. Where a default has been entered pursuant to Fed. R. Civ. P.

55(a), the defendant loses her standing before the court, along with her right to present evidence on all issues (other than unliquidated damages).¹ 10 James Wm. Moore, *Moore's Federal Practice* ¶ 55.32[1] (3d ed. 1997). The entry of default bars the defendant from contesting the truth of the facts alleged in the complaint, as those alleged facts are deemed admitted. *Id.*; see also *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) (citing *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (“[t]he defendant, by his default, admits the plaintiff’s well-pleaded allegations of fact” though “there must be sufficient basis in the pleadings for the judgment entered”)).

In this action, the United States is seeking injunctive relief under 26 U.S.C. (“I.R.C.”) §§ 7402, 7407 and 7408. Because I.R.C. §§ 7407 and 7408 set forth specific criteria for injunctive relief, the United States need only meet those statutory criteria, without reference to traditional equitable factors, for this Court to issue an injunction under those sections. *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

To obtain an injunction under I.R.C. § 7407, the United States may show, among other things, that the defendant (1) engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, or engaged in any other fraudulent or deceptive

¹ The issue of unliquidated damages is not relevant in the present case because the United States seeks only injunctive relief.

conduct that substantially interferes with the proper administration of the internal revenue laws, and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct. To obtain an injunction under I.R.C. § 7407, which prevents the defendant from acting as an income tax return preparer, the United States must additionally show that the defendant engaged in this conduct continually or repeatedly and that a narrower injunction would be insufficient to prevent defendant from interfering with the proper administration of the internal revenue laws. *United States v. Bailey*, 789 F. Supp. 788, 816 (N.D. Tex. 1992). To obtain an injunction under I.R.C. § 7408, the United States may show, among other things, that the defendant engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief is appropriate to prevent the recurrence of such conduct. Finally, to obtain an injunction under I.R.C. § 7402(a), the United States must show that an injunction is necessary or appropriate to enforce the internal revenue laws.

Findings of Fact

Based on the well-pleaded allegations and evidence presented the Court finds that:

1. This Court has jurisdiction over the parties and subject matter of this case.
2. Defendant Marcia A. Johnson is an income tax return preparer within the meaning of I.R.C. § 7701(a)(36).

3. Johnson does business as M.C. Tax Service, M.C. Tax Interprise, and M.J. Tax Service.
4. On February 7, 2011, the United States filed its Complaint for Permanent Injunction and Other Relief.
5. Johnson was served with a summons and a copy of the Complaint on March 1, 2011.
6. The time allotted for Johnson to answer, move, or otherwise respond to the summons and Complaint expired on March 22, 2011
7. Johnson has not responded to the summons and Complaint and its allegations.
8. No stipulation or order has been entered extending the time for Johnson to answer, move, or otherwise respond to the summons and Complaint.
9. Upon information and belief, Johnson is not an incompetent or infant.
10. The Department of Defense Manpower Data Center Servicemembers' Civil Relief Act database does not possess any information indicating that Johnson is currently on active duty in the United States military.
11. Johnson has repeatedly and continually engaged in conduct in violation of I.R.C. § 6694 by understating her customers' income tax liabilities by negligently and willfully claiming frivolous and meritless federal fuel tax credits that had no realistic possibility of being sustained on the merits. The federal fuel tax credits

Johnson claimed were based on business activities that were ineligible for federal fuel tax credit under I.R.C. § 6421, and the amounts claimed were so exaggerated that no reasonable person could conclude they were anything but deliberately fabricated.

12. Johnson prepared, or assisted in the preparation of, at least 207 federal income tax returns that included false fuel tax credit claims exceeding \$1.5 million.

13. Johnson has repeatedly and continually engaged in conduct in violation of I.R.C. § 6694 by understating her customers' income tax liabilities by negligently and willfully inflating or fabricating Earned Income Tax Credits ("EITC").

Johnson prepared, or assisted in preparing, over 100 Schedules C for customers that were blatantly fraudulent because the documents listed the same three business addresses. The Schedule C businesses referenced in the customers' tax return documents were completely fabricated for the purpose of maximizing the customers' EITC claims.

14. During tax years 2007, 2008, and 2009, nearly 80% of the returns Johnson prepared, or assisted in preparing, included a claim for the EITC. The returns that Johnson prepared, or assisted in preparing, during tax years 2007, 2008, and 2009 alone claimed a total of \$1,586,866 in EITCs.

15. Johnson has violated I.R.C. § 6695 by ignoring the "due diligence" requirements that obligate a return preparer to obtain certain types of information

from the customer and to ask the customer questions to ensure the customer is legitimately entitled to the EITC.

16. Johnson has engaged in conduct in violation of I.R.C. § 6695 by failing to provide the IRS with copies of the returns that she prepared for tax years 2004, 2005, and 2006 or a list of returns that she prepared during that time, as the IRS requested pursuant to I.R.C. § 6107(b).

17. Johnson has engaged in conduct in violation of I.R.C. § 6695 by using an invalid P-TIN when preparing returns for customers.

18. Johnson has engaged in conduct in violation of I.R.C. § 6695 by preparing returns which direct the IRS to deposit her customers' refunds directly into the defendants' personal bank accounts.

19. Johnson has repeatedly and continually engaged in conduct in violation of I.R.C. § 6701 by preparing fraudulent returns that make false claims for the fuel tax credit and EITC, knowing that such returns understate her customers' tax liabilities and that the returns will be used in connection with a material matter arising under the internal revenue laws.

20. Absent this permanent injunction, Johnson is likely to continue to defraud the United States Treasury by intentionally understating her customers' income tax liabilities.

21. Johnson's fraudulent activities are sufficiently broad and flexible that a narrow injunction prohibiting only certain enjoined activities is unlikely to prevent continued interference by Johnson with the proper administration of the internal revenue laws.

Conclusions of Law

The Court finds that Defendant has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent Defendant, and any business or entity through which she operates, and anyone acting in concert with her, from further engaging in such conduct. The Court further finds that because such conduct was continual and repeated, and because a narrower injunction would not be sufficient to prevent Defendant's interference with the proper administration of the internal revenue laws, that Defendant should be enjoined from further acting as a federal tax return preparer under § 7407.

The Court further finds that Defendant engaged in conduct subject to penalty under 26 U.S.C. § 6701, and that injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent Defendant, and any business or entity through which she operates, from further engaging in such conduct.

The Court further finds that Defendant engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is

appropriate pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a) to prevent recurrence of such conduct.

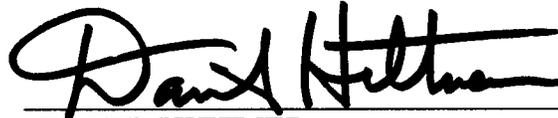
Based on the foregoing and the record in this case, and for good cause shown,

IT IS HEREBY ORDERED that Marcia A. Johnson, individually and doing business as M.C. Tax Service, M.C. Tax Interprise, and M.J. Tax Service, and those persons in active concert or participation with her, are permanently enjoined from directly or indirectly:

- (1) acting as a federal income tax return preparer, or assisting in or directing the preparation or filing of federal tax returns 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 26 U.S.C. § 6694;
- (3) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6701, or any other penalty provision in the Internal Revenue Code; 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.

IT IS FURTHER ORDERED that the United States is permitted to conduct discovery to ensure compliance with the terms of this permanent injunction.

Dated this 11 Day of May, 2011.

A handwritten signature in black ink, appearing to read "David Hittner", written over a horizontal line.

DAVID HITTNER
U.S. DISTRICT JUDGE