

**United States District Court for the
Eastern District of Missouri**

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|---------------------------|---|----------|
| United States of America, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. |
| v. |) | |
| |) | |
| Richard Gray, Sr., |) | |
| |) | |
| Defendant. |) | |

Complaint

The United States of America alleges against Richard Gray, Sr. (“Gray”), as follows:

1. This is a civil action brought by the United States under §§ 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (“I.R.C.”) to enjoin Richard Gray, Sr., and anyone in active concert or participation with him, from directly or indirectly:

- (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 other persons;
- (b) Advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return;
- (c) Engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6701, or any other penalty provision in the I.R.C.; or
- (d) Otherwise 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 I.R.C. §§ 7402(a), 7407, and 7408.

3. Jurisdiction exists under 28 U.S.C. §§ 1340 and 1345 and I.R.C. § 7402(a).
4. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1) and (b)(2).

Gray's Background

5. Gray works on the production line at a Chrysler plant in Kokomo, Indiana. The Chrysler plant experiences sporadic shutdowns due to production demand so Gray maintains a temporary residence in Kokomo where he stays when the plant is operational. Gray spends the remainder of the year at his home in St. Louis, Missouri.

6. Gray operates a tax return preparation business from his home in St. Louis. His customers include family, friends, neighbors, and co-workers. He advertises his tax return preparation services by word of mouth.

7. Gray has no formal training in tax law or tax return preparation and prepares tax returns for others using Turbo Tax computer software. Gray told an IRS agent that he relies on the questions asked by the Turbo Tax software when preparing returns.

8. In 2009, 134 electronically-filed tax returns were traced to Gray's IP address.

9. Gray intends to prepare tax returns full-time when he retires from Chrysler.

Gray's Deceptive Conduct

10. Gray generally receives between \$20-\$100 for preparing a tax return.

11. Gray fails to report the income he earns from his tax return preparation business on his own individual income tax returns.

12. Gray claims he accepts only gratuities for his return preparation services, and therefore, he is not required to report the money he receives as income. This contradicts well-settled law establishing that tips and/or gratuities constitute taxable income. Line 7 of the IRS

Form 1040 (Individual Income Tax Return) specifically requires taxpayers to list “Wages, salaries, *tips*, etc.” as income (emphasis added).

13. Gray does not sign the returns he prepares for others as the paid preparer to avoid detection as the paid preparer.

14. In some cases, Gray instructs the IRS to deposit his customers’ refunds directly into his own personal checking account, which he lists on lines 74b and 74d of the customers’ tax returns. Upon information and belief, Gray generally remits a portion of this money to his customers and keeps the remainder as a fee for his services.

15. One of Gray’s customers stated that she never received her 2006 refund despite records showing that her refund was deposited into Gray’s checking account.

Gray Creates Bogus Schedule C Businesses and Claims False Deductions

16. Gray prepares federal income tax returns containing sham Schedule C businesses and then reports bogus deductions on the Schedules C to create phony losses. Gray’s action result in the understatement of those customers’ tax liabilities.

17. On a customer’s 2005 and 2006 tax returns, Gray claimed bogus deductions for a fictitious day care business. The customer told an IRS agent that she occasionally babysat for friends and family, but never considered herself the owner of a day care business.

18. On another customer’s 2006 return, Gray prepared a sham Schedule C for a fake automotive repair business. Gray then generated a business loss by claiming false deductions on the Schedule C and used the loss to offset the taxpayer’s income, thereby improperly reducing the customer’s tax liability. During an audit, this customer told the IRS that he never told Gray he owned an automotive repair business. He only provided Gray with a Form W-2 for wage income.

Gray Abuses the Earned Income Tax Credit

19. Gray commonly abuses the earned income tax credit (EITC) to obtain refunds for his customers to which they are not entitled.

20. The EITC is a refundable tax credit available to certain low-income individuals. The amount of the credit is based on the taxpayer's income, filing status, and claimed number of dependents. The requirements for claiming the EITC are located in 26 U.S.C. § 32.

21. Because the EITC is a refundable credit, claiming it can reduce a taxpayer's federal tax liability below zero, entitling the taxpayer to a refund from the U.S. Treasury.

22. Due to the method used to calculate the EITC, an individual can claim a larger EITC by claiming multiple dependants. For certain income ranges, individuals with higher annual incomes are entitled to a larger credit than those with lower annual incomes.

23. Unscrupulous tax return preparers like Gray exploit the rules by claiming bogus dependants on their customers' returns and/or by minting phony Schedule C businesses to generate non-existent income.

24. Gray knows that customers claiming more dependents are entitled to a larger EITC.

25. Furthermore, Gray knows that once a taxpayer qualifies for the EITC, up until a certain point, the more income the taxpayer has, the larger the EITC will be.

26. To maximize the EITC for one customer, Gray offered to sell her a random child's social security number so that she could claim that child as a dependent on her tax return.

27. For another customer, Gray prepared a bogus Schedule C claiming the customer earned income from an adult day care business, when in fact she did not. The income allowed the taxpayer to generate a larger refund on her return.

Harm Caused by Gray

28. Gray's motive is to secure relatively large refunds for his customers in order to attract, retain and grow his tax return preparation business.

29. Gray's conduct harms the United States and the public fisc because his customers under-report their correct tax liabilities and in many cases receiving unwarranted refunds.

30. As stated above, Gray prepared at least 134 federal income tax returns in 2009.

31. The IRS examined 20 returns prepared by Gray and found an average deficiency of \$3,800 per return.

32. Extending the average tax deficiency of \$3,800 by the approximate 134 returns prepared in 2009 results in a total tax loss of over \$500,000 due to Gray's misconduct.

33. Many of Gray's customers who have been audited by the IRS have admitted that the items claimed on their tax returns are not based upon any information they provided to Gray, nor did Gray ask for any documentation to support the information.

34. In many cases, Gray falsifies the information on his own volition and does not allow the customer to review the return before he electronically files it with the IRS.

35. Gray's customers have been harmed because they paid him substantial return preparation fees (upwards of \$100) and relied on him to prepare proper tax returns.

36. Instead, Gray prepares returns that substantially understate their correct tax liabilities. Now, many customers may face large income tax deficiencies, including sizeable penalties and interest.

37. Gray further harms the United States because the IRS must devote limited resources to identifying Gray's customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties.

38. Gray's activities also undermine public confidence in the administration of the federal tax system and encourage noncompliance with tax laws.

Count I
Injunction Under § 7407 for
Conduct Subject to Penalty Under §§ 6694 and 6695

39. Plaintiff incorporates by reference the allegations in paragraphs 1 through 38.

40. Section 7407 of the Code authorizes the United States to seek an injunction against any tax preparer who, among other things, has engaged in any conduct subject to penalty under I.R.C. §§ 6694 and 6695.

41. If a return preparer's conduct 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 acting as a return preparer.

42. Section 6694(b) of the Code penalizes a tax return preparer who prepares a return or claim for refund with respect to which any part of an understatement of liability is due to:

- a. a willful attempt to understate the liability for tax on the return or claim or
- b. a reckless or intentional disregard of rules or regulations.

43. As demonstrated in the examples above, by preparing sham Schedules C and promoting the use of bogus dependents, Gray willfully understates his customers' proper tax liabilities and shows an utter and intentional disregard of the internal revenue laws.

44. Injunctive relief is necessary to prevent Gray's continued misconduct because absent an injunction Gray intends prepare tax returns full-time after retiring from Chrysler.

45. Allowing Gray to continue prepare tax returns will enable his customers to receive greater refunds than what they are legitimately entitled, thereby diminishing the public fisc.

46. Section 6695(b) of the Code penalizes a tax return preparer for failing to sign a return. Gray never signs the returns he prepares for others as their paid preparer. As a result, the IRS must spend considerable resources just to ascertain the scope of Gray's return preparation business.

47. Gray should be permanently enjoined under 26 U.S.C. § 7407 from acting as a tax return preparer because a more limited injunction would be insufficient to stop his interference with the proper administration of the tax laws or to deter his penalty conduct. Penalties and other administrative measures are insufficient to deter his conduct. Only the threat of criminal contempt will deter Gray's conduct.

Count II
Injunction under I.R.C. § 7408 for
Conduct Subject to Penalty Under § 6701

48. Plaintiff incorporates by reference the allegations in paragraphs 1 through 47.

49. Section 7408 of the Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

50. Section 6701(a) of the Code 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.

51. Gray prepares tax returns containing sham Schedule C businesses and uses these Schedules C to claim improper deductions in order to generate refunds for customers beyond which they are legitimately entitled.

52. Gray willingly aids and assists customers in filing tax returns with sham Schedule C businesses knowing this will result in customers understating their tax liability and receiving unwarranted refunds.

53. If the Court does not enjoin Gray, he will likely to continue to engage in conduct subject to penalty under I.R.C. § 6701.

54. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III
Injunction under I.R.C. § 7402(a)
Necessary to Enforce the Internal Revenue Laws

55. Plaintiff incorporates by reference the allegations in paragraphs 1 through 54.

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

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

58. Unless enjoined, Gray is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Gray is not enjoined from engaging in this fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully issuing tax refunds in amounts beyond which his customers are legitimately entitled.

59. Enjoining Gray is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop Gray's illegal conduct and the harm it causes the United States and his customers, current and prospective.

60. 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 Richard Gray, Sr., has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 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 I.R.C. § 7407, enter a permanent injunction prohibiting Richard Gray, Sr., from acting as a federal tax return preparer;

C. That the Court find that Richard Gray, Sr., has engaged in conduct subject to a penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct.

D. That the Court find that Richard Gray, Sr., 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 I.R.C. § 7402(a);

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Richard Gray, Sr., and all those in active concert or participation with him, from:

- (1) 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 himself;
- (2) Advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return;
- (3) Engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6701, or any other penalty provision in the I.R.C.; or
- (4) Otherwise engaging in any conduct that substantially interferes with the proper administration and enforcement of the Internal Revenue laws.

F. That the Court require Gray, within 60 days of the date of the Court's Order, to mail an executed copy of the Stipulated Final Judgment of Permanent Injunction to all persons for whom he has prepared a federal tax return or form since January 1, 2009. The mailing shall include a cover letter in a form agreed to by counsel for the United States or approved by the Court, and shall not include any other documents or enclosures except those specifically mentioned herein.

G. That the Court require Gray, to produce to counsel for the United States, within 45 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 he has prepared a federal tax return or form since January 1, 2009;

H. That the Court require Gray, within 65 days of the date of the Court's Order, to file with the Court a sworn certificate stating that he has complied with the requirements set forth in Paragraphs F and G.

I. That the Court retain jurisdiction over Gray, and over this action, to enforce any permanent injunction entered against him;

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

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

Dated: January 3, 2012

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney

s/ Mark C. Milton
MARK C. MILTON
Missouri Bar No. 63101
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-2904
Fax: (202) 514-6770
Email: Mark.C.Milton@usdoj.gov