

CV 12 3689

SUMMONS ISSUED

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

DIANA D. BERTOCCI-ALIFFI,)
d/b/a DIANA ALIFFI TAX)
AND ACCOUNTING SERVICES, a/k/a)
DIANA ALIFFI TAX SERVICES, a/k/a)

Defendant.)

Civil No. ★

JUL 24 2012 ★

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

LONG ISLAND OFFICE

SEYBERT, J
BOYLE, M.

COMPLAINT FOR PERMANENT INJUNCTION

The United States, plaintiff, for its complaint against Diana D. Bertocci-Aliffi, defendant,
alleges as follows:

Nature of the Complaint

1. This is a civil action brought by the United States to enjoin Diana D. Bertocci-Aliffi ("Aliffi"), and any entity through which she conducts business and all persons and entities in active concert of participation with her, from:
 - a. preparing or assisting in the preparation of any federal income tax return for any other person or entity;
 - b. understating taxpayers' tax liabilities as is subject to penalty under § 6694 of the Internal Revenue Code, 26 U.S.C. (I.R.C.);
 - c. failing to exercise due diligence in determining eligibility for the earned income credit as required by I.R.C. § 6695(g);

- d. assisting or advising others with regards to the preparation of any portion of a tax return or other document to be used in connection with a material matter arising under the internal revenue laws and which the defendant knows or should know will result in the understatement of tax liability, as prohibited by 26 U.S.C. (I.R.C.) § 6701;
- e. organizing or selling any plan or arrangement that makes, or causes another person to make, a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of participating in the plan or arrangement which the defendant knows or should know is false or fraudulent as to any material matter, as prohibited by I.R.C. § 6700;
- f. engaging in any other 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 a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of I.R.C. §§ 7402, 7407, and 7408.
- 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and I.R.C. §§ 7402(a), 7407, and 7408.
- 4. Venue is proper in the United States District Court for the Eastern District of New York under 28 U.S.C. § 1391(b) because the defendant resides in this district and because a substantial part of the events giving rise to the claim occurred in this district.

Defendant

5. Diana Bertocci-Aliffi ("Aliffi") lives in East Rockaway, New York.
6. Aliffi was a federal tax return preparer. She prepared other people's federal tax returns for compensation.
7. Aliffi received instruction in tax law in college classes and from Jackson Hewitt Tax Service, where she also worked for one tax season.
8. From 1986 to 2001, Aliffi worked at various accounting firms as a tax accountant. There is no indication that she was ever licensed as a certified public accountant in any state. From about 2001 or 2002 to 2007 or 2008, she prepared federal and state tax returns as a sole proprietor. Her business has been known as Diana Aliffi Tax Services or Diana Aliffi Tax & Accounting Services. During 2005, Aliffi was the Director of Public Relations for the Suffolk County chapter of the New York State Society of CPAs.
9. In April 2008, Aliffi was indicted in Suffolk County District Court on 76 charges – including grand larceny, identity theft, and forgery – related to her tax-preparation activities. In January 2008, she had stolen the identities of former customers and had filed federal and New York State tax returns for the 2007 tax year, using made-up information, without their knowledge or permission. She used these returns to apply for refund anticipation loans from JPMorgan Chase Bank and HSBC Bank, and diverted part of the amount, typically \$750 to \$1,500, to her bank accounts as a "fee" for preparing these fraudulent returns. Some customers found out about the unauthorized false returns only when they received a check from the bank.

10. Aliffi pleaded guilty to all 76 counts. She was sentenced to one to three years in jail, and was in fact incarcerated from February to August 2009. She was ordered to pay \$57,694 in restitution to JPMorgan Chase. The plea agreement also barred her from preparing or assisting in the preparation of tax returns, as well as advising others regarding tax returns or related documents.¹

Defendant's Activities

11. Starting in at least 2006, Aliffi knowingly prepared federal income tax returns and amended returns that claimed false Indian Employment Tax Credits (IETCs). She has also knowingly prepared false W-2s and federal income tax returns showing false wages and withholding. Both types of fraudulent returns resulted in unwarranted tax refunds for her customers.
12. The IETC gives the employer of an enrolled member of an Indian tribe or employer of a spouse of an enrolled member a credit against the federal income tax, provided that the employer and the employee meet certain statutory requirements. *See* I.R.C. § 45A. It is not a credit against the tribe member's own tax liability.
13. Aliffi prepared at least 19, and possibly as many as 180, returns and amended returns with false IETC claims. She erroneously told her customers that Native Americans who lived on or near a reservation could claim this credit. As a result, many Native Americans near the Shinnecock Indian Reservation in Southampton, New York came to her for help in

¹ The plea agreement was not specific as to whether she was barred from filing and advising with regards to both federal and New York State returns or only New York State returns.

claiming this credit. She prepared current-year returns and amended returns for previous years on their behalf.

14. On the amended returns, Aliffi usually lowered the taxpayers' originally-reported taxable income by claiming additional deductions, resulting in a lower tax. Then she claimed the IETC in an amount that, with or without other additional credits, wiped out the taxpayer's lowered tax liability and led to a false or inflated refund.
15. Only one of the returns included a Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, making it extremely unlikely that these taxpayers had any employees and let alone Indian employees for which they could claim the IETC.
16. Aliffi also prepared at least four and possibly as many as 55 federal income tax returns that show either false wage income and withholding – sometimes accompanied by false W-2s – and Schedule A deductions or Schedule C business losses that were unreasonable in light of their amounts and the taxpayer's reported occupation. Some returns also included inflated deductions for charitable contributions and medical expenses.
17. Although Aliffi was never licensed as a Certified Public Accountant, she held herself out to be one to her customers and signed some of returns that she prepared as "Diana Aliffi CPA."
18. The IRS has identified 216 returns prepared by Aliffi that contained false items. Many of the false or inflated returns were intercepted before the refunds were issued. However, the IRS has expended more than \$26,000 in administrative costs in identifying these returns, intercepting the refunds, and investigating Aliffi and her customers.

19. Aliffi's conduct subjects her customers to IRS examination, which results in penalties and interest assessed against them.

Example 1

20. Edgar and Cheryl Franklin, who live on the Shinnecock Indian Reservation, went to Aliffi for tax-preparation services in 2006. Edgar Franklin is Native American.
21. Aliffi prepared the Franklins' 2005 return and their 2002, 2003, and 2004 amended returns.
22. On each of the amended returns, Aliffi reported a taxable income that was lower than the originally-reported income either by claiming additional Schedule A deductions (2003 and 2004) or simply reducing the adjusted gross income without explanation (2002). A lower tax liability would result.
23. Aliffi then used the IETC to reduce the lowered tax liability to zero. In each case, she completed Form 8845 for the IETC, claiming that the Franklins had paid wages and health insurance costs for Native American employees. In each case, the resulting IETC was the exact same amount as the lowered tax liability.
24. Aliffi also claimed the IETC on the 2005 return that she prepared for the Franklins.
25. None of the returns or amended returns that Aliffi prepared for the Franklins included a Schedule C or any indication that they might have had employees. In fact, on all the returns and amended returns, Edgar Franklin reported that he was retired and Cheryl Franklin reported that she was a secretary.
26. The 2005 return also included other items that were inconsistent with Edgar Franklin's retired status and lack of a Schedule C. These include two W-2s supposedly issued to

Edgar Franklin, with wages totaling \$45,842; a claim for \$18,396 in unreimbursed employee business expenses and \$2,974 in union or professional dues; and a Form 4562 for the depreciation and amortization of property used in business or production of income.

Example 2

27. Aliffi prepared a 2007 federal income tax return for Johnny Dougherty. The home address listed on the return for Dougherty is that of the New York Police Department. Aliffi reported that Dougherty received \$12,000 in wages from the Brookhaven National Laboratory with \$4,478 in withheld federal income tax, and attached a W-2 to that effect. This resulted in a refund of \$4,193.
28. In fact, Dougherty received \$73,114 in non-employee compensation from Coliseum Gym & Fitness Center, LLC in 2007 and had no federal income tax withheld.
29. Aliffi prepared and filed several other 2007 federal income tax returns with similar false information for customers, in each case listing the address of the New York Police Department as the customer's home address, reporting nonexistent wage income from the Brookhaven National Laboratory with similarly nonexistent federal withholding, and generating false refunds for the customer, at times in conjunction with a fraudulent earned income credit. In each case, the customer in fact had not received income from Brookhaven National Laboratory.

COUNT I: INJUNCTION UNDER I.R.C. § 7407

30. The United States incorporates the allegations of paragraphs 1 through 29.

31. Section 7407 of the Internal Revenue Code authorizes courts to enjoin a person from acting as a tax preparer if that person has continually or repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, and if an injunction that only prohibits the conduct would not be sufficient to prevent the person from interfering with the proper administration of the federal tax laws.
32. Section 6694 of the I.R.C. imposes penalties on a tax return preparer who either (a) prepared a return or claim for refund that results in an understatement of tax liability due to an unreasonable position, without reasonable cause for the understatement or good faith; or (b) willfully attempted to understate tax liability, or recklessly or intentionally disregarded rules and regulations in connection with an understatement of tax liability. Under the current version of § 6694(a), if a position is or was not supported by substantial authority, it is unreasonable. I.R.C. § 6694(a)(2)(A) (2011) (as amended). Before the amendment of § 6694(a) in 2008, a position was unreasonable if (1) the tax preparer knew or reasonably should have known of the position, (2) there was no reasonable belief that the position would more likely than not be sustained on its merits, and (3) either (a) was not disclosed in a manner provided in the I.R.C., or (b) if no reasonable basis existed for the position. I.R.C. § 6694(a)(2)(A)-(C) (2008).
33. Section 6695 of the I.R.C. imposes penalties on a tax return preparer who fails to comply with due-diligence requirements when determining eligibility for or the amount of the earned income tax credit.
34. From 2006 to 2008, Aliffi was a tax return preparer as defined by I.R.C. § 7701(a)(36) because she prepared other people's tax returns for compensation.

35. Aliffi engaged in conduct subject to penalty under § 6694(a) and (b) by preparing returns that resulted in the understatement of tax liability as a result of an unreasonable position, as defined in both pre- and post-2008 versions of § 6694(a); and willfully attempting to understate her customers' tax liability or recklessly and intentionally disregarding rules and regulations. She prepared returns on which she misrepresented her customers' eligibility for the Indian Employment Tax Credit. She fabricated W-2s and reported false income and withholding on her customers' returns. She also reported false home addresses for her customers on their returns.
36. Aliffi also failed to comply with the due-diligence requirement with regard to her customers' eligibility for the earned income credit and thus violated §6695(g). Because eligibility for and the amount of the credit are linked to taxable income, Aliffi's misrepresentations of her customers' income misstated their entitlement to the credit.
37. An injunction is appropriate to prevent this misconduct because, absent an injunction, Aliffi is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in the complaint.
38. Aliffi should be permanently enjoined under I.R.C. § 7407 from acting as a federal tax return preparer. Her repeated and continual conduct over several years subject to an injunction under § 7407, her conviction by guilty plea to 76 charges of grand larceny, identity theft, and forgery in state court, and the egregious nature of her fabricated items on customer tax returns demonstrate that a narrower injunction prohibiting specific misconduct would be insufficient to prevent her interference with the proper administration of the internal revenue laws.

COUNT II: INJUNCTION UNDER I.R.C. § 7408

39. The United States incorporates the allegations of paragraphs 1 through 38.
40. Section 7408 of the I.R.C. authorizes courts to issue injunctions against conduct that is subject to penalty under I.R.C. § 6701 if injunctive relief is appropriate to prevent recurrence of the conduct.
41. Section 6701 penalizes any person who aids or assists in the preparation of any part of a tax return or other document knowing 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 would result in the understatement of another person's tax liability.
42. As shown above, Aliffi prepared federal tax returns for others knowing that the returns would result in the understatement of tax liability. Accordingly, she should be enjoined under I.R.C. § 7408 from engaging in conduct subject to penalty under § 6701.
43. Unless enjoined by the Court, Aliffi is likely to continue to prepare tax returns that she knows will result in the understatement of tax liability. Accordingly, she should be enjoined under I.R.C. § 7408 from engaging in conduct subject to penalty under § 6701.

COUNT III: INJUNCTION UNDER I.R.C. § 7402

44. The United States incorporates the allegations of paragraphs 1 through 43.
45. Section 7402(a) of the I.R.C. authorizes courts to issue injunctions as may be necessary or appropriate to enforce the internal revenue laws. The remedies available to the United States under the statute "are in addition to and not exclusive of any and all other remedies." I.R.C. § 7402(a).

46. Through actions described above, Aliffi engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to do so in the future unless enjoined.
47. Aliffi's conduct has caused irreparable injury to the United States and an injunction under I.R.C. §7402(a) is necessary and appropriate. If Aliffi is not enjoined from preparing tax returns, the United States will suffer irreparable injury by erroneously providing tax refunds to persons not entitled to receive them and from taxpayers' not reporting and paying the correct amount of taxes.
48. Unless Aliffi is enjoined, the IRS will have to devote substantial time and resources to identify and locate her customers, and then examine those customers' tax returns. Given the IRS's limited resources, pursuing all individual customers may be impossible.
49. In addition to the harm caused by Aliffi's preparation of false income tax returns, Aliffi's activities undermine confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.
50. Enjoining Aliffi is in the public interest because an injunction will stop her illegal conduct and the harm it causes the United States.
51. The Court should therefore order injunctive relief under I.R.C. § 7402(a).

THEREFORE, the United States requests that the Court:

A. Find that Aliffi continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695 and 6701, and that injunctive relief limited to prohibiting such conduct would not be sufficient to prevent her interference with the proper administration of the Internal Revenue Code;

B. Enter a permanent injunction pursuant to I.R.C. § 7407 prohibiting Aliffi from preparing or assisting in the preparation or filing of federal income tax returns or other related documents and forms for others;

C. Find that Aliffi engaged in conduct that interferes with the enforcement of internal revenue laws, and that injunctive relief against her is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

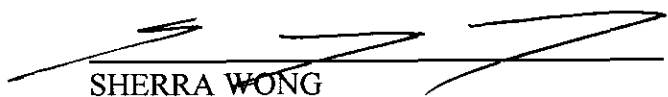
D. Authorize the United States to engage in post-judgment discovery pursuant to the Federal Rules of Civil Procedure in order to monitor compliance with the Court's injunction; and

E. Grant the United States such other and further relief as the Court deems appropriate.

Dated: July 23, 2012

Respectfully submitted,

LORETTA E. LYNCH
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