

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 3:12-cv-3660
)	
RICARDO G. SOLOMON and LESLIE)	
MOSLEY, individually and doing business)	
as TRINI TAX,)	
)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America seeks a permanent injunction against Ricardo G. Solomon and Leslie Mosley, individually and doing business as Trini Tax (hereinafter, “Defendants”), permanently barring Defendants from claiming false fuel tax credits and engaging in other conduct subject to penalty under the Internal Revenue Code (“IRC”).

1. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a deputy of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of IRC (26 U.S.C.) §§ 7401, 7402, 7407, and 7408.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1340 and 1345 and IRC §§ 7402(a), 7407, and 7408.

3. This is a civil action brought by the United States under IRC §§ 7402(a), 7407, and 7408 to enjoin Defendants and any other person(s) acting in concert or collusion with them from:

- A. acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- B. understating taxpayers' liabilities as prohibited by IRC § 6694;
- C. engaging in any other activity subject to penalty under IRC §§ 6694, 6701, or any other penalty provision of the IRC; and
- D. engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because a substantial portion of the activities occurred within this district.

Defendants

5. Ricardo Solomon is a paid federal tax return preparer in Dallas, Texas. Solomon has prepared returns since 2010.

6. Solomon is the sole proprietor of Trini Tax, located at 18110 Midway Road, Suite 146, in Dallas, Texas. Solomon, doing business as Trini Tax, prepares federal tax returns for others.

7. Leslie Mosley is a paid federal tax return preparer in Dallas, Texas. Mosley is an employee or associate of Solomon and/or Trini Tax. Mosley, doing business as Trini Tax, is listed as the paid preparer on a number of federal income tax returns since 2011; however, neither Mosley, Solomon, nor Trini Tax have reported to the IRS any wages or income that

Mosley earned for preparing tax returns. Mosley has prepared returns using a false Preparer Tax Identification Number.

8. Defendants prepare and file federal income tax returns for their customers on which they improperly claim false or fraudulent fuel tax credits and other refundable credits.

Fraudulent Fuel Tax Credit Deductions

9. Defendants have prepared numerous blatantly fraudulent federal income tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms, Defendants misapplied IRC § 6421(a). The fuel tax credit is available only to taxpayers who operate farm equipment or other off-highway business vehicles. Moreover, the equipment or vehicles using the fuel must not be registered for highway uses.

10. During processing year 2011, thirty-three percent (33%) of the 566 returns that Trini Tax prepared claimed a frivolous fuel tax credit. Refunds totaling nearly \$700,000 were issued as a result of these filings.

Overview of IRC § 6421: Credit for Federal Tax Paid on Fuels

11. Fraudulently claiming the fuel tax credit is a widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, Defendants improperly claim the fuel tax credit for their customers' purported business motor fuel purchases.

12. Section 6421(a), IRC, provides a tax credit for fuel used in an off-highway business use. Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered and not required to be registered for use on public highways. IRS publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines such as generators, compressors,

power saws, and similar equipment; (2) for cleaning purposes; and (3) in forklift trucks, bulldozers, and earthmovers. *See* IRS Publication 225 (2011), Farmer's Tax Guide, Chapter 14 (2011) (available online at: www.irs.gov/pub/irs-pdf/p225.pdf)

13. IRS Publication 510 defines a highway vehicle as any "self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions." A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles are not eligible for the fuel tax credit. IRS Publication 510 provides the following as examples of highway vehicles which are not eligible for the fuel tax credit: passenger automobiles, motorcycles, buses, and highway-type trucks and truck tractors. *See* IRS Publication 510 (2011), Excise Taxes, Part One (available online at: www.irs.gov/pub/irs-pdf/p510.pdf).

14. IRS Publication 510 provides the following example of an appropriate application of the fuel tax credit:

Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mover at home does not qualify.

15. In short, the fuel tax credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways.

Defendants' Fraudulent Claims of the Fuel Tax Credit

16. Defendants prepare federal income tax returns for customers and improperly reduce customers' reported tax liabilities by claiming bogus fuel tax credits under IRC § 6421.

17. Defendants prepare false IRS Forms 4136 for customers, falsely claiming that those customers had used gasoline for qualified off-highway business purposes.

18. The following chart shows six examples of Defendants' fraudulent fuel tax credit claims on 2010 federal income tax returns:

Name, city, and state of customer	Amount of off-highway business use of gasoline claimed on Form 4136	Cost of claimed business use of gasoline*	Estimated yearly/daily mileage**	Total income	Amount of gasoline credit	Refund Requested
Carlina Andrade, Dallas, TX	9,875 gallons	\$26,663	98,750 miles per year/271 miles per day	\$14,927	\$1,807	\$10,902
David Serna, Dallas, TX	12,451 gallons	\$33,617	124,510 miles per year/341 miles per day	\$6,891	\$2,279	\$2,702
Mark Sanders, Dallas, TX	9,989 gallons	\$26,970	99,890 miles per year/274 miles per day	\$20,800	\$1,828	\$4,674
Cecil Roberts, Arlington, TX	11,201 gallons	\$30,243	112,010 miles per year/307 miles per day	\$29,825	\$2,050	\$7,815
Collette Polk, Dallas, TX	15,642 gallons	\$42,233	156,420 miles per year/429 miles/day	\$27,299	\$2,862	\$6,132
Martin Zeno, Sulphur, LA	22,147 gallons	\$59,797	221,470 miles per year/607 miles/day	\$4,333	\$4,053	\$5,053

* Estimated total cost based on the average price of gasoline in 2010, \$2.70 per gallon.

**Estimated mileage based on 10 miles per gallon.

19. On the returns in the table above (and on other returns), Defendants fraudulently claimed that their customers purchased large quantities of fuel for off-highway business purposes. For example, Solomon claimed that Carlina Andrade purchased 9,875 gallons of gasoline in 2010, which would have cost \$26,663. However, Andrade's adjusted gross income

for the year was only \$14,927. Thus, Andrade could not have afforded to purchase the gasoline Solomon claimed on the return. Furthermore, to use that volume of gasoline, assuming a mileage of 10 miles per gallon, Andrade would have to have driven 98,750 miles - off-highway - during the year, or roughly 271 miles per day, every day of the year. This shows the blatantly fraudulent nature of Defendants' preparation of federal income tax returns abusing the fuel tax credit.

Defendants' Fraudulent Claims of Education Tax Credit

20. Education Tax Credits under IRC § 25A(i) provide for an income credit for qualified tuition and other expenses incurred by the taxpayer during the first four years of post-secondary education.

21. Expenses that qualify include tuition and fees required for enrollment or attendance at an accredited college, university, vocational school, or other post-secondary educational institution that is eligible to participate in a student aid program administered by the Department of Education.

22. Educational institutions are required to report to the IRS the amounts paid for all qualified education expenses via a Form 1098-T.

23. Although Defendants knew or should have known that their customers were not entitled to the education credit, Defendants repeatedly prepared federal income tax returns falsely claiming that their customers were entitled to education credits for post-secondary education.

24. For example, Mosely prepared the 2010 federal income tax return for Collete Polk, falsely claiming education credits of \$1,000. According to the Internal Revenue Service's records, Polk did not attend an educational institution in 2010.

25. In response to a letter from the Internal Revenue Service, Polk filed an amended return which did not include an education credit. The amended return was prepared by an individual not associated with Trini Tax.

Harm to the Public

26. Defendants' preparation of false and fraudulent tax returns has resulted in customers claiming and, to the extent that the Internal Revenue Service has not detected the fraudulent returns, receiving substantial federal income tax refunds to which they are not entitled. The IRS has identified 187 income tax returns for tax year 2010 that list Trini Tax as the preparer's company name and which contain false, fictitious, or frivolous claims for fuel tax credit and other refundable credits.

27. In 2011 and 2012, Ricardo Solomon has prepared at least 1,506 returns. Ninety-nine percent (99%) of the returns he prepared claim a refund, an extraordinarily high refund rate.

28. Defendants' conduct harms the United States because their customers are receiving refunds to which they are not entitled.

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

30. Defendants further harm the United States because the Internal Revenue Service must devote its limited resources to identifying their customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. The IRS estimates that its administrative costs associated with this scheme thus far exceed \$40,000.

Count I
Injunction under IRC § 7407

31. The United States incorporates by reference the allegations in paragraphs 1 through 30.

32. Section 7407, IRC, authorizes a district court to enjoin a tax return preparer from:

- A. engaging in conduct subject to penalty under IRC § 6694;
- B. engaging in conduct subject to penalty under IRC § 6695;
- C. failing to comply with an IRS request under IRC § 6107(b);
- D. misrepresenting his eligibility to practice before the Internal Revenue Service, or otherwise misrepresenting his experience or education as a tax return preparer; or
- E. 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. If the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court 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 federal tax return preparer entirely.

33. Defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by willfully and knowingly preparing federal income tax returns for customers that improperly understate customers' tax liabilities based on unrealistic, frivolous, and reckless positions.

34. Defendants have continually and repeatedly violated IRC § 6694 by preparing and filing federal income tax returns claiming fraudulent fuel tax credits for off-highway business uses.

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

36. If they are not enjoined, Defendants are likely to continue to file false and fraudulent tax returns.

Count II
Injunction under IRC § 7408

37. The United States incorporates by reference the allegations in paragraphs 1 through 36.

38. Section 7408(a)-(c), 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.

39. Section 6701(a), 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 a 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.

40. As detailed above, Defendants have knowingly and willfully prepared false federal tax returns for customers that they knew would understate the customers' correct tax liabilities. They intentionally filed false fuel tax credits and education credits. Defendants' conduct is thus subject to penalty under IRC § 6701.

41. If the Court does not enjoin Defendants, they are likely to continue engaging in conduct subject to penalty under IRC § 6701. Injunctive relief is therefore appropriate under IRC § 7408.

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

42. The United States incorporates by reference the allegations of paragraphs 1 through 41.

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

44. Defendants, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws by intentionally filing false fuel tax credits and education credits.

45. Unless enjoined, Defendants are likely to continue engaging in this improper conduct. If Defendants are not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully issuing federal income tax refunds to individuals not entitled to receive them.

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

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

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

A. That the Court find that Ricardo G. Solomon and Leslie Mosley have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 and have continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the administration of the tax laws, and that injunctive relief is appropriate under IRC §§ 7402 and 7407 to bar Ricardo G. Solomon and Leslie Mosley from acting as federal tax return preparers and from engaging in conduct subject to penalty under IRC § 6694;

B. That the Court find that Ricardo G. Solomon and Leslie Mosley have engaged in conduct subject to penalty under IRC § 6701, and that injunctive relief under IRC §§ 7402 and 7408 to bar Ricardo G. Solomon and Leslie Mosley from engaging in conduct subject to penalty under IRC § 6701;

C. That the Court find that Ricardo G. Solomon and Leslie Mosley have 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);

D. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Ricardo G. Solomon and Leslie Mosley and all those in active concert or participation with them from:

- (1) acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself, 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 taxpayers' liabilities as prohibited by IRC § 6694;
- (3) engaging in any other activity subject to penalty under IRC §§ 6694, 6701, or any other penalty provision of the IRC; and
- (4) engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring that Ricardo G. Solomon and Leslie Mosley, within 30 days of entry of the injunction, contact by United States mail and, if an e-mail address is known, by e-mail, all persons for whom they prepared a federal tax return to inform them of the Court's findings concerning the falsity of Defendants' prior representations and enclose a copy of the executed permanent injunction against them, and file with the Court a sworn certificate stating that they have complied with this requirement;

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Ricardo G. Solomon and Leslie Mosley to produce to counsel for the United States within 30 days a list that identifies by name, social security number, address, e-mail address, telephone number and tax period(s) all persons for whom they prepared federal tax returns or claims for a refund since January 1, 2009;

G. That the Court retain jurisdiction over Ricardo G. Solomon and Leslie Mosley and over this action to enforce any permanent injunction entered against Defendants;

H. That the United States be entitled to conduct discovery to monitor Ricardo G. Solomon's and Leslie Mosley's compliance with the terms of any permanent injunction entered against them; and

I. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

DATED: September 7, 2012

Respectfully submitted,

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