

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
TORREY BURDEN, individually and d/b/a)	
A&L FINANCIAL SOLUTIONS,)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION

The plaintiff, the United States of America, files this complaint for permanent injunction and alleges as follows:

1. This is a civil action brought by the United States of America pursuant to 26 U.S.C. §§ 7402(a) and 7407 to permanently enjoin the defendant Torrey Burden, individually and doing business under the name A&L Financial Solutions or under any other entity, and his representatives, agents, servants, employees, attorneys, and all persons in active concert or participation with him, from directly or indirectly:

- a. Preparing, filing or assisting in the preparation or filing of any federal tax return for any other person or entity;
- b. Providing any tax advice or tax services for compensation, including preparing or filing returns, providing consultative services, or representing customers;
- c. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695(g);
- d. Engaging in conduct subject to penalty under 26 U.S.C. § 6701; and
- e. Engaging in any conduct that interferes with the proper administration and

enforcement of the internal revenue laws through the preparation or filing of false tax returns.

JURISDICTION AND VENUE

2. This action has been authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of Treasury, and commenced at the direction of the Attorney General of the United States, pursuant to the provisions of 26 U.S.C. §§ 7401 and 7407.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7407.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 and 26 U.S.C. § 7407 because defendant resides in and has his principal place of business within this district.

DEFENDANT

5. Defendant Torrey Burden resides in St. Petersburg, Florida, 33712, which is within this district.

6. A&L Financial Solutions is defendant Burden's sole proprietorship that maintains its principal place of business at 1619 16th Street South, St. Petersburg, Florida 33705.

7. Defendant Burden, through A&L Financial Solutions, is a paid tax-return preparer who prepares or assists in the preparation of federal income tax returns for customers. He is neither a public accountant nor a lawyer and has no professional licenses.

8. A&L Financial Solutions was formed by Defendant Burden in 2004 to provide tax return preparation. At all relevant times, Defendant Burden has prepared tax returns through this business.

9. Defendant Burden was born in June 1979. He is a high school graduate but earned no degrees beyond his high school diploma. Prior to starting his own tax preparation business, Burden worked for a check cashing and tax preparation business. In 2004, Burden opened his own business, A&L Financial Solutions, preparing tax returns for others. Burden employs three individuals to assist him in his tax preparation business. Burden is responsible for reviewing and signing all completed tax returns.

10. Burden prepares tax returns for customers residing in Florida and advertises through his website, www.taxservicessaintpetersburg.com.

DEFENDANT'S FRAUDULENT TAX PREPARATION SCHEME

11. Burden claims that A&L Financial Solutions has about 400-500 customers per tax season. The Internal Revenue Service records reflect that Burden and A&L Financial Solutions prepared 465 returns during the 2011 tax season and 453 returns for the 2010 tax season. Out of the 465 returns prepared by Burden for 2011, 463 returns (or 99%) claimed refunds and 338 returns (or 72%) claimed an earned income tax credit.

12. Since at least 2007, Burden has repeatedly prepared returns without performing the necessary due diligence to determine his customer's eligibility for the earned income tax credit. As a result, many of the returns that Burden prepared improperly claim earned income tax credit for ineligible taxpayers. Moreover, Burden consistently fabricates or inflates Schedule C deductions in order to claim the maximum amount of the earned income tax credit and reduce his client's tax liability.

13. In December 2010, an IRS Revenue Agent performed a due diligence examination of returns prepared by Burden during the 2010 filing season. Of the 115 returns reviewed by the IRS, it was determined that a penalty was warranted for 112 of those returns for Burden's failure to comply with the due diligence requirements of 26 U.S.C. § 6695(g) and the regulations thereunder. The IRS assessed a penalty against Burden pursuant to 26 U.S.C. § 6695(g) in the amount of \$11,200, plus interest. Because of Burden's failure to be diligent, many of the returns that he prepared were incomplete, incorrect or inconsistent.

14. According to an interview Burden gave to an IRS Revenue Agent in December 2011, Burden requires clients to complete an intake form and provide identification, social security cards and other documents needed to prepare their returns. Burden then interviews the clients and completes the tax return. Upon completion of the return, the client will sign the necessary documents. Burden estimated that it takes approximately 15 minutes to prepare each return.

15. The IRS conducted audits of federal income tax returns prepared by Burden for the years 2007 through 2011. Of the 80 returns audited to date, 92.5 percent resulted in additional taxes owed to the IRS.

16. During the December 2011 interview, the IRS Revenue Agent reviewed 20 client files from Burden's 2010 inventory. This review revealed a pattern of improper and, in some cases, fraudulent conduct as described in more detail below.

Fabrication or Inflation of Deductions

17. Burden fabricates or inflates deductions reported on his customers' Schedule C (Form 1040), Profit or Loss from Business, in order to inflate the number of "business" expenses

his customers' claim. For instance, Burden routinely advises clients to improperly deduct both gas and mileage expenses. Burden also improperly reports clothing and dry cleaning expenses on the Schedule C. By fabricating or inflating deductions, Burden is able to reduce his customers' taxable income and their resulting tax liability. Some examples include:

a. Burden prepared the 2010 federal income tax return for GW¹. GW received \$39,133 in wages for 2010. Burden also reported on GW's Schedule C gross receipts from an alleged courier/messenger business in the amount of \$1,623 with \$26,335 in expenses. The expenses included both a gas expense in the amount of \$6,034 and a mileage expense in the amount of \$18,837. These expenses resulted in a \$24,712 loss for the "business" that reduced GW's taxable wage income from \$39,133 to \$15,969. Burden provided no narrative and his file contained no documentation explaining the high expenses for a part-time business that only recorded very little in gross income. Burden also incorrectly deducted both gas and mileage for this taxpayer.

b. Burden prepared the 2010 federal income tax return for SM. SM received \$32,221 in wages for 2010. Burden also reported on SM's Schedule C zero gross receipts for an alleged residential care business but \$17,000 in expenses. The expenses included :(1) \$2,912 for gas; (2) \$6,162 for mileage; (3) \$3,328 for dry cleaning; and (4) \$4,598 for clothing. The \$17,000 loss Burden reported on the Schedule C reduced SM's taxable income to \$15,890. Burden provided no narrative or documentation explaining the high expenses for a part-time business that reported zero gross receipts. Buren also incorrectly

¹Burden's clients have been identified in this complaint by their first and last initials.

deducted both gas and mileage for SM and improperly deducted expenses for dry cleaning and clothing on Schedule C.

c. Burden prepared the 2010 federal income tax return for AH. AH received \$29,734 in wages for 2010. Burden also reported on AH's Schedule C gross receipts in the amount of \$3,852 from an unidentified business with \$18,059 of expenses. The expenses included: (1) \$5,044 for gas ; (2) \$8,827 for mileage, (3) \$936 for dry cleaning; and (4) \$2,232 for uniforms. The \$14,207 loss Burden reported on the Schedule C reduced AH's taxable income to \$15,527. Burden provided no narrative or documentation how the taxpayer had such high expenses for a part-time business that only recorded \$3,852 in gross income. Burden also incorrectly deducted both gas and mileage for this taxpayer.

d. Burden prepared the 2010 federal income tax return for CW. CW received \$25,616 in wages for 2010. Burden also reported on CW's Schedule C zero in gross receipts from an unidentified business with \$12,475 in expenses. The expenses included: (1) \$2,132 for gas; (2) \$6,396 for mileage; (3) \$1,716 for dry cleaning; and (4) \$2,231 for uniforms. The \$12,475 loss Burden reported on the Schedule C reduced CW's taxable income to \$15,891. Burden provided no narrative or documentation to verify the legitimacy of the Schedule C business nor did Burden provide an explanation of the high expenses for a part-time job with no gross income. Burden also incorrectly deducted mileage and gas and incorrectly deducted expenses for dry cleaning and uniforms on the Schedule C.

e. Burden prepared the 2010 federal income tax return for LC. LC received wages in

the amount of \$63,715 for 2010. Burden also reported on LC's Schedule C gross receipts in the amount of \$1,853 for an alleged courier business and \$51,530 of expenses. The expenses included: (1) \$8,096 for gas; (2) 20,240 for mileage; (3) \$1,300 for cleaning; (4) \$4,728 for uniforms; and (5) \$1,277 for computers. The \$49,677 loss Burden reported on the Schedule C reduced LC's taxable income to \$15,696. Burden provided no narrative or documentation to verify the legitimacy of the Schedule C business nor did Burden provide an explanation of the high expenses for a part-time job with no gross income. Burden also incorrectly deducted both mileage and gas.

Improperly Claiming Fuel Tax Credit

18. Burden regularly claims fuel tax credits on his client's returns when the credit is not warranted. During his interview with the IRS, Burden stated that he claimed fuel tax credits when his clients used their vehicle for business. The fuel tax credit, however, is only available for a reimbursement for fuel used in certain circumstances, including off-highway business use, farming purposes, export, commercial fishing, local and school bus, a qualified blood collector organization, a nonprofit educational organization, a state (or political subdivision), or in an aircraft or vehicle owned by an aircraft museum. Examples of Burden improperly claiming this credit include:

a. Burden prepared the 2010 federal income tax return for EG. EG received \$61,771 in wages for 2010. Burden reported on EG's Schedule C gross receipts from an alleged hauling service business in the amount of \$4,486 with expenses of \$46,679. Again, Burden deducted both gas (\$13,156) and mileage (\$20,566). Burden also improperly claimed the fuel tax credit in the amount of \$990. Burden provided no narrative or

documentation showing off-highway use or any other applicable use. There was no documentation and no narrative to support the fuel tax credit that Burden claimed.

b. Burden prepared the 2010 federal income tax return for YB. YB received \$96,222 in wages for 2010. Burden reported on YB's Schedule C gross receipts from an alleged event planning business in the amount of \$11,334 with expenses of \$94,219. Burden deducted both gas (\$9,308) and mileage (\$17,199), plus dry cleaning (\$13,525), uniforms (\$3,768) and sampling (\$15,885). Burden provided no documentation to support this Schedule C business. Burden also improperly claimed the fuel tax credit in the amount of \$833. There was no documentation and no narrative to support the fuel tax credit that Burden claimed.

c. Burden prepared the 2010 federal income tax return for LA. LA received no wages but reported \$10,328 in gross receipts from an unidentified business. Burden also improperly claimed a fuel tax credit for LA in the amount of \$1,166. There was no documentation and no narrative to support the fuel tax credit that Burden claimed.

Failure to Conduct Due Diligence for Earned Income Tax Credit

19. Burden has repeatedly prepared returns for taxpayers in which he has failed to be diligent in determining the taxpayer's eligibility for the credit under 26 U.S.C. § 32, i.e. the Earned Income Tax Credit ("EITC"). Among the due diligence requirements, return preparers must not ignore the implications of information furnished to, or known to them, and must make reasonable inquiries if the information furnished to or known by the preparer appears to be incorrect, inconsistent, or incomplete. Treas. Reg. § 1.6695-2(b)(3). Return preparers must also retain certain records, including records of how and when information used to complete the EITC

eligibility checklist was obtained by the tax return preparer. Treas. Reg. § 1.6695-2(b)(4). Burden failed to satisfy these requirements and has repeatedly prepared returns that improperly claim the EITC. For example:

- a. Burden prepared the 2010 federal income tax return for JD. JD received wages in the amount of \$22,486 for 2010. Burden claimed an EITC for JD in the amount of \$5,565. Burden included three “qualifying children” (brother, sister and grandchild) in his calculation of EITC. Burden, however, failed to inquire about, or document, the residency of the children or the status of the children’s parents. Nor was there any documentation or narrative concerning the disability claimed for the brother and sister.
- b. Burden prepared the 2010 federal income tax return for RR. RR received wages in the amount of \$7,714 in 2010. Burden claimed an EITC for RR in the amount of \$2,423, including one qualifying child (a nephew) in his calculation. Burden, however, failed to inquire about, or document, the residency of the child or the status of the child’s parents.
- c. Burden prepared the 2010 federal income tax return for JW. JW received wages in the amount of \$33,565 in 2010. Burden claimed an EITC for JW in the amount of \$2,694, including one qualifying child (a sister) in his calculation. Burden, however, failed to inquire about, or document, the residency of the sister, the status of the parents of the sister, or the claimed disability of the sister.

20. The IRS conducted EITC audits of returns prepared by Burden from 2007-2011. Out of the 67 returns audited, at least 61 returns prepared by Burden erroneously claimed the EITC. The IRS examined those returns and either adjusted the amount of the credit or

disallowed it in its entirety. The total amount of disallowed earned income credit from those returns was approximately \$229,500.

HARM TO THE UNITED STATES

21. Burden's actions cause harm to the United States and to the public by unlawfully understating his customer's tax liabilities.

22. To date, the IRS has conducted audits of 80 returns prepared by Burden for 2007-2011. Of the audited returns, 92.5 percent resulted in deficiencies, with the average understatement of income tax liability being \$4,487 per return. Burden prepares approximately 450 income tax returns a season. Using the average deficiency of the returns examined to date, the IRS projects that the total tax loss from the returns prepared by Burden could exceed \$1,000,000.

COUNT I: INJUNCTION UNDER 26 U.S.C. § 7407

23. 26 U.S.C. § 7407 authorizes a court to enjoin an income tax return preparer from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 if the court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

24. Section 6694(a) penalizes a tax return preparer if the preparer prepares a return or claim for refund that includes an understatement of liability based on an unreasonable position which lacks substantial authority, and the preparer knew or should have known of the position.

25. Section 6694(b) penalizes a tax return preparer who prepares a return or claim with an understatement of liability in a willful attempt to understate the liability or with a reckless and intentional disregard of rules or regulations.

26. Section 6695(g) penalizes a tax return preparer who fails to comply with the due diligence requirements in determining eligibility for, or the amount of, the Earned Income Tax Credit.

27. Defendant Burden has regularly engaged in conduct subject to penalty under 26 U.S.C. § 6694(a) by preparing income tax returns that unlawfully reduced his customers' reported income by claiming unsubstantiated and fraudulent deductions and credits. Burden commonly reports unsubstantiated and fraudulent expenses, such as gas, mileage, and clothing. Burden did so knowing or having reason to know that the positions he took on the returns were unreasonable and lack substantial authority. Burden has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).

28. Burden prepares returns for customers with false entries in a willful attempt to understate the customer's liability or with a reckless and intentional disregard of rules and regulations. Burden has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(b).

29. Burden knew, or had reason to know, that information he used in determining his customers' eligibility for, or the amount of, the EITC was incorrect. Burden failed to make reasonable inquiries regarding information that appeared to be incorrect, inconsistent and/or incomplete. In that regard, Burden failed to inquire whether his customers were meeting the support test to claim dependents. Because the number of dependents effects the eligibility to claim EITC, Burden has thus engaged in conduct subject to penalty under 26 U.S.C. § 6695(g).

30. Burden has continually and repeatedly engaged in conduct that violates 26 U.S.C. §§ 6694 and 6695(g). An injunction merely prohibiting Burden from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695(g) would not be sufficient to

prevent his interference with the proper administration of the tax laws. Burden has employed a number of schemes over an extended period of time that has resulted in the understatement of income and income tax. It is unlikely that a narrow injunction could encompass all of those schemes. Moreover, it is likely that the IRS has not yet identified all of the schemes used by Burden to understate income. Failure to permanently enjoin Burden will require the IRS to spend additional resources to uncover all of Burden's future schemes. Accordingly, only a permanent injunction is sufficient to prevent future harm. Burden should be permanently enjoined from acting as a tax return preparer.

COUNT II: INJUNCTION UNDER 26 U.S.C. § 7402

31. 26 U.S.C. § 7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

32. Burden, through his actions as described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

33. Burden's conduct causes irreparable harm to the United States and his customers.

34. Burden is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

35. If Burden is not enjoined, he is likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws. The IRS will have to devote substantial time and resources auditing Burden's clients individually to detect future deficient returns. The detection and audit of erroneous EITC refunds claims filed by Burden's customers will place a significant burden on IRS resources.

36. The United States is entitled to injunctive relief under 26 U.S.C. § 7402.

WHEREFORE, the United States prays for the following relief:

A. That the Court find that defendant Torrey Burden continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695(g), and that, pursuant to 26 U.S.C. § 7407, an injunction prohibiting such conduct would not be sufficient to prevent Burden's interference with the proper administration of the tax laws and that Burden should be permanently enjoined from acting as a tax return preparer;

B. That the Court find that Burden is interfering with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a) and the Court's inherent equity powers;

C. That the Court enter a permanent injunction under 26 U.S.C. §§ 7402(a) and 7407 prohibiting Burden, individually and doing business under the name A&L Financial Solutions or under any other name or using any other entity, and his representatives, agents, servants, employees, attorneys, and all persons in active concert or participation with him, from directly or indirectly:

1. Preparing, filing or assisting in the preparation or filing of any federal tax return for any other person or entity;
2. Providing any tax advice or tax services for compensation, including preparing or filing returns, providing consultative services, or representing customers in connection with any matter before the Internal Revenue Service;

3. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695(g); or
4. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation or filing of false tax returns;

D. That the Court, pursuant to 26 U.S.C. § 7402(a), require Burden, at his own expense, to send by mail a copy of the final injunction entered against him in this action to each person for whom he, or anyone at his direction or in his employ, prepared federal income tax returns or any other federal tax forms after January 1, 2007.

E. That the Court require Burden and anyone who prepared tax returns at the direction of or in the employ of Burden, to turn over to the United States copies of all returns or claims for refund that they prepared (or helped prepare) for customers after January 1, 2007;

F. That the Court require Burden and anyone who prepared tax returns at the direction of or in the employ of Burden, to turn over to the United States a list with the name, address, telephone number, e-mail address (if known), and social security number or other taxpayer identification number of each customer for whom they prepared returns or claims for refund after January 1, 2007;

G. That the Court require that Burden, within forty-five (45) days of entry of the final injunction in this action, to file a sworn statement with the Court evidencing his compliance with the foregoing directives; and

H. That the Court require Burden to keep records of his compliance with the

foregoing directives, which may be produced to the Court, if requested, or to the United States pursuant to paragraph J, below;

I. That the Court enter an order allowing the United States to monitor Burden's compliance with this injunction, and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

J. That the Court grant the United States such other and further relief as the Court deems appropriate.

Dated: January 24, 2013

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General

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