

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
SEMERE TSEHAYE, AHFEROM GOITOM,)	
and A & S TAX SERVICES, LLC)	Civil No. 12-cv-2183 JWL/DJW
(d/b/a Instant Tax Service))	
)	
Defendants.)	

STIPULATED ORDER FOR PERMANENT INJUNCTION AND OTHER RELIEF AGAINST SEMERE TSEHAYE AND A & S TAX SERVICES, LLC

Plaintiff, the United States of America, and defendants Semere Tsehaye (“Tsehaye”) and A & S Tax Services, LLC (“A & S”) d/b/a Instant Tax Service, stipulate and agree as follows:

1. The United States of America filed a Complaint for Permanent Injunction and Other Relief under 26 U.S.C. §§ 7402, 7407 and 7408 of the Internal Revenue Code (“I.R.C.”) against Tsehaye and A & S (“Defendants”).
2. Defendants admit that the Court has personal jurisdiction over them pursuant to 28 U.S.C. §§ 1340 and 1345, and subject matter jurisdiction pursuant to 26 U.S.C. §§ 7402(a), 7407(a) and 7408(a).
3. Defendants, without admitting any of the allegations in the complaint, waive the entry of findings of fact and conclusions of law and voluntarily consent to the entry of this permanent injunction without further notice and agree to be bound by its terms.
4. Defendants further understand and agree that:

- a. The Stipulated Order For Permanent Injunction will be entered under Fed. R. Civ. P. 65 and will result in the entry, without further notice, of a Final Judgment in this matter;
- b. Defendants waive the right to appeal from the Stipulated Order For Permanent Injunction;
- c. The Parties will bear their own costs, including any attorneys' fees or other expenses of this litigation;
- d. The Court will retain jurisdiction over this matter for the purpose of implementing and enforcing the Stipulated Order For Permanent Injunction;
- e. If Defendants violate the Injunction, Defendants may be subject to civil and criminal sanctions for contempt of court. Defendants retain the right to contest any alleged violations of the Injunction, and such proceedings for sanctions, including the right to assert proper responses.
- f. The United States may conduct full post judgment discovery, in accordance with the Federal Rules of Civil Procedure, to monitor compliance with the Injunction.
- g. Entry of this Stipulated Order for Permanent Injunction resolves this civil injunction action. Furthermore, Defendant A&S will pay \$100,000 in civil tax penalties. Accordingly, this Stipulated Order also resolves all civil tax penalties, with respect to all Defendants, except Ahferom Goitom, concerning the specific conduct alleged in the government's injunction complaint, through tax year 2011.
- h. Except as specifically provided herein, entry of this Stipulated Order for Permanent Injunction does not resolve nor preclude the government from

pursuing any other civil matters or proceedings, or any current or future criminal matters or proceedings, nor precludes the Defendants from contesting liability in any matter or proceeding.

- i. Defendant Tsehaye, pursuant to 31 C.F.R §10.8(c), is subject to the duties and restrictions relating to practice and to sanctions contained in 31 C.F.R, Subtitle A, Part 10, Subparts B and C, respectively, but only if Title 31, Code of Federal Regulations, Subtitle A, part 10 (“Circular 230”) applies to tax return preparers or tax return preparation businesses;
- j. Entry of this Stipulated Order for Permanent Injunction shall be deemed, without further proceedings, a consent to be sanctioned pursuant to 31 C.F.R. §10.61(b), but only if Circular 230 applies to tax return preparers or tax return preparation businesses.

I. IT IS HEREBY STIPULATED, AGREED AND ORDERED, pursuant to I.R.C. §§7402, 7407 and 7408, that A & S Tax Services, LLC and any individual or entity acting in active concert or participation with them, including representatives, agents, servants, employees, attorneys, family members and/or any person, are **PERMANENTLY ENJOINED**, directly or indirectly, by use of any means or instrumentalities, from

A. Preparing or filing, or assisting in the preparation or filing of any federal tax return, amended return, or claim for refund, for any person or entity;

B. Owning, managing, supervising, profiting from, or otherwise being involved in any tax return preparation business in any way;

- C. Representing before the Internal Revenue Service any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- D. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position the defendant knows will (if so used) result in an understatement of another person's tax liability;
- E. Organizing, promoting, providing, advising or selling business or tax services that facilitate or promote noncompliance with federal tax laws;
- F. Willfully engaging in conduct subject to penalty under any provision of the Internal Revenue Code;
- G. Engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws; and
- H. Misrepresenting any of the terms of this Stipulated Order for Permanent Injunction.

II. **IT IS FURTHER STIPULATED, AGREED AND ORDERED**, pursuant to I.R.C. §§ 7402, 7407 and 7408, that defendant Tsehaye and any individual or entity acting in active concert or participation with him, including representatives, agents, servants, employees, attorneys, family members and/or any person, are **PERMANENTLY ENJOINED**, directly or indirectly, by use of any means or instrumentalities, from:

- A. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or

- managing others who aid, instruct, assist, encourage, enable, incite, or advise) with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that they know or have reason to know will be used as to a material matter arising under laws or regulations administered by the Internal Revenue Service, and will result in the understatement of the liability for tax of another person;
- B. Aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) taxpayers to understate their federal tax liabilities or assert unreasonable, frivolous, or reckless positions, or preparing or assisting in the preparation or filing of tax returns for others that they know (or have reason to know) will result in the understatement of any tax liability under 26 U.S.C. 6662, or is subject to penalty under 26 U.S.C. § 6694;
- C. Knowingly and improperly aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who improperly aid, instruct, assist, encourage, enable, incite, or advise) taxpayers to evade or to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds;
- D. Engaging in any activity subject to penalty under 26 U.S.C. § 6695, including failing to (or supervising or managing others who fail to) exercise due diligence in determining taxpayers' eligibility for the Earned Income Tax Credit;
- E. Knowingly organizing, promoting, providing, advising, or selling (or supervising or managing others who organize, promote, provide, advise or sell) business or tax

services that facilitate or promote noncompliance with laws or regulations administered by the Internal Revenue Service; and

- F. Knowingly, directly or indirectly, accepting assistance from, or assisting any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service; and,
- G. Willfully engaging in conduct subject to penalty under any provision of the Internal Revenue Code;
- H. Knowingly engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;
- I. Misrepresenting any of the terms of this Stipulated Order for Permanent Injunction.

III. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Tsehaye and any individual or entity acting in active concert or participation with him, including representatives, agents, servants, employees, attorneys, family members and/or any person, is enjoined for a period of ten years following the date this order is entered, directly or indirectly, by use of any means or instrumentalities, from:

- A. Preparing or filing, or assisting in the preparation or filing of any federal tax return, amended return, or claim for refund, for any person or entity other than himself beyond a 50 mile radius (physical and virtual) from his place of permanent residence. Tsehaye's permanent place of residence is defined for this injunction as the place he physically resides for the majority of the year, and only one location annually shall be considered his place of permanent residence. Tsehaye must notify the Chief of the

Central Trial Section, at the Department of Justice, Tax Division (who currently may be reached at the following address: Department of Justice, Tax Division, Central Trial Section, 555 4th Street, N.W., Suite 8921, Washington, DC 20001), within 10 days of moving his place of permanent residence.

- B. Owning, managing, supervising, working in, profiting from, or otherwise being involved in any tax return preparation business outside of the area defined in the preceding paragraph.

IV. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Semere Tsehaye and any entity owned or operated by him, as well as his or its employees and agents, shall, in their preparation of tax returns comply with all of following requirements, and are permanently enjoined from failing to comply with the following requirements in the preparation of any tax return:

- A. Prepare and file tax returns reporting Schedule C income and expenses only in instances when the customer substantiates with documentation, to the extent required by the Internal Revenue Service, the reported income and expenses prior to the filing of the tax return;
- B. Retain in customer files a copy of all customer records and documentation for at least seven years that substantiate reported Schedule C income and expenses reflected in tax returns they prepare for their customers;
- C. Retain in customer files all records and documentation for at least seven years that substantiate deductions claimed in tax returns prepared by them;

- D. Retain in customer files all records and documentation for at least seven years that verify, to the extent required by the Internal Revenue Service, that claimed dependents on tax returns prepared for their customers meet all qualifications for dependent status;
 - E. Verify and document the marital status, to the extent required by the Internal Revenue Service, of all customers for whom they prepare a tax return that claims head-of-household status, as well as retain in customer files all records for at least seven years showing that these customers meet all requirements for claiming head-of-household status;
 - F. Retain in customer files all records and documentation for at least seven years that both substantiate all incurred education expenses reported on customer tax returns in connection with any claim for education tax credits and confirm that the customer qualifies for the education tax credit;
 - G. The terms “preparation” or “prepare” in this Order do not include preparing a draft tax return for training purposes or marketing purposes, such as giving a potential customer a general idea as to the amount of his or her federal tax refund, or to estimate the cost of preparing a tax return. If a draft tax return is signed by a taxpayer or by the return preparer or any other individual employed by defendant Tsehaye or any entity he owns or operates, it shall be deemed to not be for training or marketing purposes.
- V. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Defendant Tsehaye or any entity he owns or operates shall, among their procedures for hiring tax

preparers, conduct background checks of all such individuals, including for criminal convictions, and refrain from hiring anyone known to have been convicted of a felony relating to fraud, theft or similar conduct, to act as a tax return preparer. In addition, if Circular 230 applies to tax return preparers or tax return preparation businesses, all tax preparers hired, or supervised, by Tsehaye or any entity he owns or operates shall possess a current and valid preparer tax identification number, and shall meet all applicable standards prescribed by the Internal Revenue Service, pursuant to 31 C.F.R. §10.3 and §10.4.

VI. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Tsehaye and any entity he owns or operates, as well as their employees, are permanently enjoined from offering any loan or refund advance product that is not a RAL product as defined herein. Non-RAL products include paystub, holiday, or Instant Cash loans or advance products, which are offered to customers in connection with or using information obtained from the customer's paystub and not a genuine W-2 issued by the customer's employer. They also are enjoined from misleading customers into thinking they offer a loan or refund advance product, if in fact they do not.

A. In the event that a third-party lender provides a refund loan product ("RAL product") and that RAL product otherwise fully complies with **all federal laws**, including but not limited to the Equal Credit Opportunity Act and Truth in Lending Act, and fully complies with **all state laws**, including but not limited to all consumer protection, disclosure, finance, lending and usury laws, and that RAL product is offered using information from genuine W-2s and not paystubs,

then Tsehaye or a company he owns or operates also may offer that RAL product if the lender providing the product is not undercapitalized, is a genuine third-party lender, and is not affiliated with or owned, controlled, or operated by Defendants, ITS Financial LLC, TCA Financial LLC, Tax Tree LLC, or any individual who is or was an owner, an executive, officer, or employee of ITS Financial LLC, TCA Financial LLC, or Tax Tree LLC in 2012. Tsehaye and any entity he owns or operates may rely on the representations of a genuine third-party lender as to whether the lender providing the product is sufficiently capitalized so long as the reliance is in good faith and is reasonable.

- B. Moreover, Tsehaye and any entity he owns or operates may offer a RAL product only if they provide accurate TILA disclosures to all program applicants and written Notification of Adverse Action to all applicants who are denied a RAL, whether or not TILA or ECOA is applicable to the program.
- C. Tsehaye and any entity he owns or operates, however, (i) must disclose all costs associated with such products; (ii) must provide a comparison of the time in which a refund related to such a product will be received versus when a refund will be received directly from the US Treasury; and, (iii) are enjoined from misrepresenting the terms, loan amounts, eligibility, and fees or costs associated with such RAL product to any customer, or from charging unconscionable fees in connection with either the RAL product or Defendants' tax preparation services.

VII. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Tsehaye and any entity he owns or operates, as well as their employees, are permanently enjoined from

filing a tax return using a taxpayer paystub in lieu of a genuine Form W-2 issued by the customer's employer. They are authorized and required to retain a copy of all Forms W-2 used to prepare or file a tax return in each applicable customer's file. Tsehaye and any entity he owns or operates, as well as their employees, also are enjoined from: (1) obtaining executed forms from their customers authorizing the electronic filing of a customer's tax return until they have first obtained all documentation required for preparation of the tax return, including all Forms W-2, and have prepared the return and had the customer review the return; (2) causing or permitting any document, including tax forms, to bear a signature date other than the date that the signatory actually signed the document; or (3) creating false or purported Forms W-2 using customer paystubs or other information.

VIII. IT IS FURTHER STIPULATED, AGREED AND ORDERED that if, upon motion by the United States, the Court finds that either (1) Defendant Tsehaye knowingly filed or knowingly allowed the filing of *any* tax return during any tax year based upon information obtained solely from customer paystubs and not from a Form W-2 obtained from the taxpayer's employer, or (2) if his or his company's employees or agents filed more than a *de minimus* number of tax returns during any tax year based upon information obtained solely from customer paystubs and not from a Form W-2 obtained from the taxpayer's employer, then Tsehaye and his companies shall be permanently enjoined from acting as federal tax return preparers, supervising or managing federal tax return preparers, or assisting with, or directing the preparation or filing of federal tax returns, amended returns, claims for refund, or other related documents, for any person

or entity other than himself, or appearing as representatives on behalf of any person or organization in connection with any laws or regulations administered by the Internal Revenue Service; provided that Tsehaye retains the right to contest such injunction proceeding, including the right to assert proper defenses. Further, in the event the Court enters a permanent injunction pursuant to the preceding sentence, and if Circular 230 applies to tax return preparers or tax return preparation businesses, then Defendant Tsehaye consents, without further proceedings, to immediate revocation of his PTIN and to disbarment from practice before the Internal Revenue Service in any capacity, and the procedures contained at 31 C.F.R. §§10.82(c) – (e) shall apply, without benefit of the provisions contained in §§10.82(f) or (g).

- IX. IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Tsehaye or any business he owns or operates, as well as their employees shall disclose to each of their customers, both in writing and orally, the total amount of fees to be charged *prior* to filing the customer's tax return. They are also permanently barred from charging fees:
- A. That are not disclosed to and agreed to by the client;
 - B. For services that are not performed or for items that do not exist, including, for example, fees described as or substantially similar to Service Bureau fees charged by franchisees of ITS Financial, LLC;
 - C. That, in total, exceed the sum disclosed to the customer and are agreed to by the customer prior to the filing of each tax return; or
 - D. That are unconscionable.

X. IT IS FURTHER STIPULATED, AGREED AND ORDERED that for the purpose of determining or securing compliance with this Order, for five years from the date of this order a neutral monitor shall be selected by Tsehaye and shall be approved by a representative designated by the United States Department of Justice, to monitor the tax preparation activities of Tsehaye and any entity he owns or operates. Tsehaye shall execute all necessary consent forms required under 26 U.S.C. § 6103 for the I.R.S. to communicate directly with the neutral monitor. The neutral monitor shall be an outside entity or person and shall:

- A. Be an enrolled agent, certified public accountant, or attorney who is compensated by Tsehaye or an entity he owns or operates;
- B. Commence monitoring activities on the day before Tsehaye or any entity he owns or operates begin preparing or filing federal tax returns for others during each tax season and cease monitoring activities no earlier than April 15 of each year (the "Annual Monitoring Period"). Tsehaye, or any entity he owns or operates, is enjoined from operating a tax return preparation business without a neutral monitor in place during the Annual Monitoring Period;
- C. Have access to all records, employees, and customers, including permission to observe customer interviews conducted by tax return preparers;
- D. Randomly select, inspect and review a minimum sample of 250 federal tax returns prepared by Tsehaye, any entity owned or operated by Tsehaye, or their employees during the first 10 days of each Annual Monitoring Period, along with the corresponding customer files to ensure substantiation of

information reported on each tax return (including Schedule C substantiation where applicable) , to confirm that these returns were not filed using customer paystubs, and to monitor compliance with this Order. The percent of Schedule C returns reviewed by the neutral monitor shall be consistent (within a reasonable margin of error attributable to random sampling) with the overall percentage of Schedule C returns prepared by Tsehaye, any entity he owns, or their employees and, in no event shall the number of Schedule C returns reviewed by the neutral monitor be less than ten percent of the total number of tax returns reviewed;

- E. Randomly select, inspect and review a minimum sample of 150 federal tax returns prepared on the 11th to 25th day of each Annual Monitoring Period by Tsehaye, any entity he owns or operates, or their employees, along with the corresponding customer files to ensure substantiation of information reported on each tax return (including Schedule C substantiation where applicable), to confirm that these returns were not filed using customer paystubs, and to monitor compliance with this Order. The percent of Schedule C returns reviewed by the neutral monitor shall be consistent (within a reasonable margin of error attributable to random sampling) with the overall percentage of Schedule C returns prepared by Tsehaye, any entity he owns or their employees and, in no event shall the number of Schedule C returns reviewed by the neutral monitor be less than ten percent of the total number of tax returns reviewed;

- F. Randomly select, inspect and review a minimum sample of 25 federal tax returns (including Schedule C returns, where appropriate) prepared by Tsehaye, any entity he owns or operates, or their employees for the remainder of each Annual Monitoring Period, along with the corresponding customer files to ensure substantiation of information reported on each tax return, to confirm that these returns were not filed using customer paystubs, and to monitor compliance with this Order;
- G. Collectively, during the Annual Monitoring Period, include in the total sample of tax returns selected for review, tax returns prepared at each different business location owned or operated by Tsehaye or any entity he owns or operates; and
- H. Provide a written report to the designated representative of the United States, within thirty days of completion of the Annual Monitoring Period, setting forth in detail the manner and form in which Tsehaye have or have not complied with the terms of this Order, including the results of the review of tax returns, the identity of any customers whose tax returns fail to comply with the terms of this Order and the identity of those tax return preparers who prepared those non-compliant returns, as well as the amount of fees or other amounts charged to each customer, and any other findings.

XI. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendant A&S will pay a \$100,000 penalty. Defendant A&S shall pay half of that amount (\$50,000) within 10 days of the entry of judgment in this case, and the other half (\$50,000) no later

than April 30, 2013. If A&S does not pay those amounts on or before those dates as ordered, Tsehaye shall be personally liable for those amounts on those dates. Failure of A&S and/or Tsehaye to make said payments shall be grounds for the United States to move for a judgment holding A&S and/or Tsehaye in contempt of this Stipulated Order, provided, however, that A&S and/or Tsehaye may raise such defenses and objections to a finding of contempt as may be available to them at law or equity..

XII. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendants produce to counsel for the United States within 30 days of this injunction order a list that identifies by name, address, telephone number if available, and tax period(s), all persons who have engaged them to file a federal tax return or other tax document since January 1, 2012.

XIII. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendants must send by certified mail an executed copy of this Stipulated Order of Permanent Injunction to all former employees of A & S who Defendants know currently operate a tax return preparation business or are paid tax return preparers. Defendants must mail the copies within 45 days of the date of this Order to the last known address of each of these individuals. The mailings 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.

XIV. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendants mail or hand deliver an executed copy of this Stipulated Order of Permanent Injunction to all current employees and all employees hired by Tsehaye or any entity he owns or operates

for the next three years beginning on December 31, 2012. Defendants must mail the copies or hand deliver the copies to all current employees within 45 days of the date of this Order. The mailings 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.

XV. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendants must, within 60 days of the date of this order, file with the Court a sworn certificate stating that they have complied with the requirements set forth in Paragraphs XIII and XIV of this Order, and provide to government counsel a list of the names and addresses of all persons who have been notified.

XVI. IT IS FURTHER STIPULATED, AGREED AND ORDERED that the Court shall retain jurisdiction to enforce this injunction. The United States is permitted to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure to ensure compliance with this permanent injunction.

Consented to and submitted by,

KATHRYN KENEALLY
Assistant Attorney General
Tax Division, U.S. Department of Justice



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COUNSEL FOR PLAINTIFF


SEMERE TSEHAYE

Dated: 1/29/2013


A & S TAX SERVICES, LLC
By Semere Tsehaye, Owner

Dated: 1/29/2013


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COUNSEL FOR DEFENDANTS

IT IS SO ORDERED

Signed this 31st day of January, 2013, ~~xxxx~~

s/ John W. Lungstrum
JOHN W. LUNGSTRUM
United States District Judge