

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil No. |
| |) | |
| OSVALDO J. DIAZ, individually and |) | |
| d/b/a PROFESSIONAL ACCOUNTING |) | |
| SERVICES, INC. |) | |
| |) | |
| Defendant. |) | |

COMPLAINT FOR PERMANENT INJUNCTION

The plaintiff, the United States of America, alleges as follows:

1. This is a civil action brought by the United States of America to permanently enjoin the defendant Osvaldo J. Diaz, individually and doing business as Professional Accounting Services, Inc., or any other entity, 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 federal tax returns, amended returns, or any other related documents or forms 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. preparing, filing, or assisting in the preparation or filing of federal tax returns, amended returns, or any other related documents or forms that he knows will

result in the understatement of any tax liability or the overstatement of federal tax refunds;

- d. engaging in conduct subject to penalty under 26 U.S.C. § 6694;
- e. engaging in conduct subject to penalty under 26 U.S.C. § 6701; and
- f. engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws.

2. This action has been authorized by the Chief Counsel of the Internal Revenue Service (IRS), 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, 7402, 7407 and 7408.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407 and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 26 U.S.C. § 7407(a) because: (1) Diaz resides in this district; (2) Diaz prepares returns within this district; and (3) a substantial part of the events or omissions which give rise to the United States' claims in this action occurred within this district.

SUMMARY OF DEFENDANT DIAZ'S ACTIVITIES

5. Defendant Osvaldo Diaz resides in Coral Gables, Florida. Diaz is a paid tax-return preparer who prepares federal income tax returns for other individuals and corporations through his business, Professional Accounting Services, Inc. Diaz operates his business out of his residence in Coral Gables, Florida.

6. Diaz was born in 1964. He graduated from Florida International University in 1992 with a bachelor's degree in accounting. Prior to starting his own tax preparation business, Diaz worked in the accounting department at Dade County.

7. In 2004, Diaz started his own business, Professional Accounting Services, Inc., preparing tax returns for others. Diaz employs between two to five individuals who assist with the clerical and bookkeeping responsibilities. Diaz prepares all the tax returns.

8. The IRS records show that for the tax years 2007 to 2011 Diaz prepared approximately 12,505 individual income tax returns (Form 1040, "U.S. Individual Income Tax Return") and approximately 2000 corporate income tax returns (Form 1120, "U.S. Income Tax Return for a Corporation," and Form 1120S, "U.S. Income Tax Return for an S Corporation").

9. The IRS examined 250 federal income tax returns prepared by Diaz for the years 2007 through 2011. Of the 250 returns audited to date, 93 percent of the returns resulted in tax adjustments. Based upon this examination, the IRS determined that the returns prepared by Diaz understate each of his client's tax liability or overstate their refund by an average of \$7,290.

10. Since 2007, Diaz has repeatedly and knowingly prepared for his customers federal income tax returns which included improper deductions and credits, including fabricated Schedule C and Schedule A losses. Diaz fabricates these deductions and credits in an attempt to understate his customers' tax liabilities or inflate refunds for his customers.

11. The Schedule C is a tax form used by individuals to report income or loss from a business or a profession practiced as a sole proprietor. The Schedule A is a tax form used by individuals to report personal expenses, such as mortgage interest, real estate taxes, charitable contributions and employee business expenses. Diaz fabricates both business expenses and

personal expenses for his customers in order to decrease tax liability or improperly inflate refunds for his customers.

12. Diaz also inflates losses for his customers involved in real estate. The Schedule E is a tax form used by individuals to report supplemental income and loss from activities such as rental real estate, royalties, partnerships, S corporations and estates. Diaz fabricates expenses such as depreciation, auto expenses, maintenance and repairs.

13. Moreover, Diaz improperly applies the passive activity rules. Typically, real estate losses are limited by passive activity rules. In order to increase deductions, Diaz has incorrectly characterized his customers as active real estate professionals. In order to claim this status, a taxpayer must meet two criteria: (1) she must have devoted more than one-half of the professional hours worked throughout the year to material participation in the real estate activity; and (2) she must perform more than 750 hours of material participation in the real estate activity in the tax year. See Internal Revenue Code (26 U.S.C.) Section 469(c)(7)(B). Diaz knew or should have known that his customers were not active real estate professionals.

14. For his corporate clients, Diaz has improperly calculated business income. In particular for pass-through entities, Diaz has inflated the business's cost of goods sold by including personal expenses. This fabrication reduces business income and ultimately results in understated tax liabilities for his customers.

15. Other schemes used by Diaz to understate his customers' tax liabilities or inflate their refunds include: (1) failing to report all of his customers' income; and (2) failing to report distributions to shareholders/employees as compensation.

EXAMPLES OF FALSE AND FRAUDULENT TAX RETURNS PREPARED BY
DEFENDANT DIAZ

Returns Prepared for RB

16. Diaz prepared the 2009 and 2010 individual federal income tax returns for RB¹. Diaz also prepared the 2009 and 2010 income tax returns for RB's 100% owned pass-through limited liability company, which owned investment properties. All four of these returns were examined by the IRS, and the IRS found numerous falsehoods throughout the returns.

17. Diaz falsely reported on RB's 2009 Schedule C automobile expenses in the amount of \$10,721. Diaz was unable to substantiate this expense or show any business use for the vehicle. The IRS disallowed the claimed expense.

18. Diaz understated RB's rental income for both 2009 and 2010. RB provided Diaz with copies of the Form 1099s, but Diaz reported a different figure on RB's return. For 2010, the 1099 stated that RB received \$20,932 in rental income, but Diaz reported that RB received \$17,600 in rental income for 2010.

19. Diaz reported that RB actively participated in his rental properties and claimed a \$25,000 rental loss for 2009 and a \$10,694 rental loss for 2010. Diaz should have known that RB did not meet the requirements for active participation. The rental properties were located in a different state and RB had hired a management company to oversee the properties. Accordingly, the claimed rental loss for 2009 and 2010 were disallowed.

20. On RB's Schedule E for 2009, Diaz claimed a depreciation expense of \$4,830.

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

The depreciation expense was claimed for a rental property, but during the audit, Diaz admitted that the expense was claimed in error. Diaz also claimed association fees for the rental properties for 2009 in the amount of \$4,848 and for 2010 in the amount of \$3,300. Diaz again claimed that these expenses were taken in error.

21. For RB's related LLC corporate income tax returns, Diaz understated the gross receipts for the LLC. RB stated that he did not know how Diaz calculated the sales figures reflected on the returns. Diaz also reported other deduction expenses in the amount of \$2,953 for 2010. RB was unable to explain these expenses and claimed that he was unaware of how or why Diaz reported such expenses.

22. The IRS audit of RB's tax returns resulted in increased tax liability for 2009 in the amount of \$19,343 and for 2010 in the amount of \$3,631.

Returns Prepared for CP & MP

23. Diaz prepared the 2008, 2009 and 2010 individual income tax returns for CP and MP. Diaz also prepared the related income tax returns for CP's 100% owned S corporation for 2008 and 2009. CP provided Diaz with bank statements and check stubs, and Diaz would prepare the returns with this information.

24. For 2009, Diaz reported the costs of good sold for CP's S corporation was \$256,804. The IRS determined that most of these expenses were personal and not ordinary and necessary business expenses. The expenses included private school for CP's daughter, mortgage payments for his personal residence, large personal credit card payments and utilities for his personal residence. The IRS disallowed \$226,909 of these personal expenses, and the resulting costs of good sold was \$29,895.

25. Diaz reported personal expenses as business expenses throughout the Forms 1120S for 2008 and 2009. These deductions included outside services fees paid to MP's mother, health and life insurance for CP's family, and mortgage payments for a personal residence that were classified as equipment rent. The IRS disallowed the personal expenses in the amounts of \$85,146 for 2008 and \$21,420 for 2009.

26. Diaz failed to report distributions from the S corporation to CP and MP as compensation. The IRS reclassified the distributions as compensation in the amount of \$208,724 for 2008 and \$212,517 for 2009. This adjustment resulted in employment tax assessments in the amount of \$19,840 for 2009 and \$19,137 for 2008.

27. The IRS audit resulted in increased tax liability for CP and MP for 2008 in the amount of \$51,352, for 2009 in the amount of \$77,961, and for 2010 in the amount of \$74,972.

Returns prepared for TGS

28. Diaz prepared the 2009 individual income tax return for TGS. Diaz reported on TGS's Schedule A job expenses in the amount of \$12,527, including \$10,121 in vehicle expenses. TGS is a school teacher and claims that she drives her car a couple times a month for field trips. TGS has no receipts or records to substantiate her claimed expenses. The deductions were disallowed. Diaz also reported \$726 in education credits for TGS. TGS claims she did not attend any classes and did not discuss educational expenses with Diaz. These adjustment resulted in an increase in tax liability for TGS for 2009 in the amount of \$3,072.

Returns prepared for JC and LA

29. Diaz prepared the 2008 and 2009 individual income tax returns for JC and LA.

Diaz also prepared the related income tax returns for LA's 100% owned S corporation for 2008 and 2009. All four returns were examined by the IRS. LA met with the IRS agent and explained that once a year she would give Diaz all her bank statements and cancelled checks. Diaz would then prepare the returns.

30. The IRS disallowed numerous expenses that were reported on the returns because the taxpayers were unable to substantiate the claimed expenses. On the Forms 1120S, the IRS disallowed \$63,677 for 2008 and \$17,567 for 2009 for costs of good sold. Other expenses were also disallowed for lack of substantiation, including, auto expenses, equipment, office rent, depreciation and repair and maintenance. Distributions to JC and LA were reclassified as wages and employment taxes were assessed. The adjustment resulted in an increase in total tax liability for 2008 in the amount of \$38,817 and for 2009 in the amount of \$11,110.

HARM TO THE UNITED STATES

31. Diaz has caused harm to the United States and to the public by unlawfully understating his customers' tax liabilities and overstating their refunds.

32. Diaz's conduct harms the United States because his customers are under-reporting and under-paying their correct tax liabilities as well as over-reporting their refunds. This conduct caused substantial revenue losses to the United States.

33. To date, the IRS has conducted audits of 250 returns prepared by Diaz for 2007-2011. Of the audited returns, 93 percent resulted in deficiencies, with an average adjustment of \$7,290 per return. Diaz prepares approximately 2500 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 Diaz could be tens of millions of dollars.

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

34. The United States incorporates by reference the allegations in paragraphs 1-33.

35. Section 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.

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

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

38. Defendant Diaz 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. Diaz commonly reports unsubstantiated and fraudulent expenses. Diaz does so knowing or having reason to know that the positions he takes on the returns are unreasonable and lack substantial authority. Diaz has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).

39. Diaz has prepared returns for customers with false entries in a willful attempt to

understate the customer's liability or overstate their refund with a reckless and intentional disregard of rules and regulations. Diaz has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(b).

40. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Diaz is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint.

41. Diaz 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.

COUNT II: INJUNCTION UNDER 26 U.S.C. § 7408

42. The United States incorporates by reference the allegations in paragraphs 1-33.

43. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under 26 U.S.C. § 6701, which penalizes a person who aids or assists in the preparation of tax returns that the person knows will result in an understatement of tax liability, where the person has engaged in such conduct and injunctive relief is appropriate to prevent recurrence of such conduct.

44. Diaz has engaged in conduct subject to penalty under 26 U.S.C. § 6701 by preparing income tax returns that claim deductions that he knew to be false or inflated and by claiming credits when he knew that the taxpayer was not entitled to the credit.

45. Diaz's repeated actions such as those described above fall within 26 U.S.C. § 7408(c)(1), and injunctive relief is appropriate to prevent recurrence of this conduct.

46. Accordingly, Diaz should be permanently enjoined from preparing any returns

that improperly claim or inflate deductions or credits.

COUNT III - INJUNCTION UNDER 26 U.S.C. § 7402

47. The United States incorporates by reference the allegations in paragraphs 1-33.

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

49. Diaz, through his actions as described above, has repeatedly and continually engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

50. If Diaz continues to act as a tax return preparer, his conduct will result in irreparable harm to the United States and his customers. Diaz's conduct has caused irreparable harm to the United States by creating large and potentially undiscoverable and unrecoverable tax loss to the United States Treasury. Moreover, unless Diaz is enjoined from preparing returns, the IRS will have to devote substantial time and resources auditing Diaz's clients individually to detect future returns that understate income.

51. The United States has no other adequate remedy at law besides a permanent injunction to prevent the harm Diaz will continue to cause through preparation of a large volume of erroneous returns which generate substantial tax losses. Much of these tax losses will never be discovered. Of those that are discovered, the United States will be unable to recover all those losses through the typical notice and collection procedures available to it. In any event, none of the significant resources necessary to discover and recover these losses are themselves recoverable by the United States.

52. The irreparable harm to the United States without the injunction far outweighs

any harm the injunction might cause Diaz. Diaz will be able to pursue other endeavors to support himself, but the United States cannot recover the additional money lost if Diaz is allowed to continue preparing returns.

53. It will be in the public interest to enjoin Diaz from continuing to prepare tax returns so as to put a stop to his abusive schemes which have thus far generated millions of dollars in tax loss.

54. If Diaz is not enjoined, he will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6701 and that otherwise substantially interferes with the enforcement and administration of the internal revenue laws.

55. 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 Osvaldo Diaz has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694, that, pursuant to 26 U.S.C. § 7407, an injunction narrowly prohibiting such conduct would not be sufficient to prevent Diaz's interference with the proper administration of the tax laws, and that Diaz should be permanently enjoined from acting as a tax return preparer;

B. That the Court find that Diaz has repeatedly and continually engaged in conduct that substantially interferes with the proper 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 find that Diaz has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. § 6701 and that injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent recurrence of that conduct;

D. That the Court enter a permanent injunction prohibiting Diaz, individually and doing business under the name Professional Accounting Services, Inc. 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 federal tax returns, amended returns, or any other related documents or forms 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. Preparing, filing, or assisting in the preparation or filing of federal tax returns, amended returns, or any other related documents or forms that he knows will result in the understatement of any tax liability or the overstatement of federal tax refunds;
4. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6701; or
5. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws;

E. That the Court require Diaz, 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.

F. That the Court require that Diaz, 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

G. That the Court require Diaz 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 G, below;

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

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

Dated: April 15, 2013

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General

By: /s/ Mara A. Strier
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