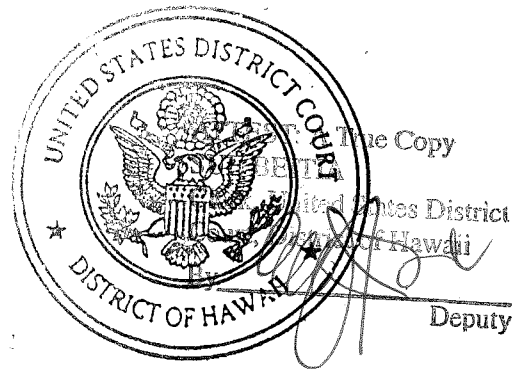


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Attorneys for Plaintiff  
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

CV13 00551 KSC

UNITED STATES OF AMERICA

Plaintiff,

v.

JAMES A. ERICSON,

Defendant.

Civil No.

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF; SUMMONS IN A  
CIVIL ACTION

The United States of America ("United States"), through its  
undersigned counsel, complains and alleges as follows.

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a) and 7407 to enjoin James A. Ericson ("Defendant"), and anyone in active concert or participation with him, from:

a. acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than himself;

b. preparing or assisting in preparing or filing federal tax returns, amended returns, or other related documents or forms that he knows or reasonably should know will result in an understatement of federal tax liability or the overstatement of federal tax refunds as prohibited by 26 U.S.C. § 6694;

c. engaging in any other activity subject to penalty under 26 U.S.C. § 6694 or any other penalty provision in the Internal Revenue Code; and

d. engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

#### JURISDICTION AND VENUE

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the

Attorney General, pursuant to the provisions of 26 U.S.C. §§ 7402 and 7407.

3. Jurisdiction is conferred on the Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7407.

4. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396 because Defendant resides in this judicial district and a substantial part of the actions giving rise to this suit took place within this judicial district.

DEFENDANT

5. Defendant resides in Kihei, Hawaii, and has an office in Kahului, Hawaii, both of which are within the jurisdiction of this Court.

6. Defendant is a paid federal tax return preparer who operates through a business sometimes referred to as Jim Ericson, Tax and Accounting, or Jim Ericson "The Tax Guy."

7. Defendant, who has an undergraduate degree from Western Washington University in Bellingham, Washington, and an M.B.A. from a school in Seattle, Washington, has been preparing federal tax returns since at least the mid-1980s.

8. Between approximately 1983 or 1984 and 1987, Defendant owned and operated an accounting and tax return preparation business in Seattle, Washington. In 1987, Defendant moved to Maui and opened a tax preparation business. Defendant obtained a business license in 1990 from the State of Hawaii. For the

1994 tax season, Defendant worked with a C.P.A. on Maui preparing tax returns.

9. Defendant has continuously owned and operated his own accounting and tax return preparation business on Maui from 1987 through the present. Defendant prepares roughly over 1,000 federal tax returns per year.

#### DEFENDANT'S ACTIVITIES

10. For approximately the past 30 years, and continuing to the present, Defendant has been engaged in the preparation of tax returns, acting as a paid income tax return preparer for individuals (sometimes referred herein as "customers"). Defendant currently offers tax return preparation services through his sole proprietorship, which he owns and operates.

11. Defendant has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 in that he has, among other things, (1) taken unrealistic and unsustainable positions on customers' tax returns, resulting in understatements of tax due, (2) willfully understated the tax due (and, in nearly every case, overstated a refund due) on customers' tax returns, and (3) recklessly or intentionally disregarded the rules and regulations pertaining to the preparation of tax returns.

12. Further, Defendant has continually and repeatedly engaged in fraudulent and deceptive conduct which has

substantially interfered with the proper administration of the Internal Revenue laws in that Defendant has, among other things, improperly and purposefully reduced and understated customers' tax liabilities by fabricating business schedules, business expenses, and business income for non-existent businesses, claiming false or inflated credits, and deducting personal expenses which are not legally deductible. This has resulted in an undeserved refund in most cases.

13. Defendant has been informed by the Internal Revenue Service ("IRS") that his conduct is improper and illegal; however, Defendant has continued to prepare improper tax returns. In addition, the IRS assessed civil penalties against Defendant for understatements of his client's tax liabilities under 26 U.S.C. § 6694(b) as follows:

Penalty	Tax Year	Assessment Date	Assessed Amount
\$ 6694 (b)	2006	6/8/2009	\$1,000
\$ 6694 (b)	2006	6/15/2009	\$1,000
\$ 6694 (b)	2006	6/22/2009	\$1,000
\$ 6694 (b)	2007	6/8/2009	\$5,000
\$ 6694 (b)	2007	6/15/2009	\$5,000

SPECIFIC ALLEGATIONS REGARDING DEFENDANT'S CONDUCT

How Defendant's return-preparation scheme worked

14. At all times relevant hereto, Defendant's typical customers were, and are, middle and low-income individual wage earners. Defendant advertises mainly by word of mouth but has also utilized an internet web site. Customers typically are referred by friends, coworkers, and/or relatives who have received refunds through Defendant. Between 86-92 percent of the federal income tax returns Defendant prepares result in a refund.

15. Defendant operates a high-volume business for Maui. Defendant generally prepares each return after only a single meeting or conference with a customer at Defendant's office, which usually lasts only a few minutes.

16. During the customer conference, Defendant solicits information pertaining to the customer's personal living expenses as well as her hobbies, pets, purchases of personal assets such as cars and computers, and whether she entertains guests. Defendant does not request receipts or other supporting documentation from the customer, nor make any reasonable inquiries to determine and substantiate the actual amounts of any expenses.

17. Defendant then prepares the return using only the oral estimates provided by the customer. Defendant also fabricates

business schedules and deductions on Schedule A (Itemized Deductions) and Schedule C (Profit and Loss from Business) to facilitate the deduction of non-deductible personal living expenses and non-deductible expenses relating to hobbies or activities not engaged in for profit of the customer. Defendant also fraudulently claims education credits for some customers, to which they are not entitled. By preparing his customers' returns in this manner, Defendant creates phony businesses, business expenses, and business losses so that he can offset the customers' legitimate income and wages in order to fraudulently reduce their income tax liability resulting in a fraudulent refund being issued to them by the IRS.

18. Defendant does not point out or explain these bogus schedules and deductions to his customers. Instead, if a customer questions the accuracy of the return, Defendant reassures the customer that the return, and the manner in which he prepared the return, is accurate by stating that he is a well-established return preparer with many years of experience and, to some customers, he goes further by falsely stating that he is a former employee of the IRS.

19. In nearly every case, Defendant appears to have improperly generated false deductions large enough to create a refund.

### PARTICULAR CUSTOMER'S EXPERIENCES

20. One customer, "Customer 1," utilized Defendant to prepare his 2009, 2010, and 2011 tax returns after being referred to Defendant by friends at work. The returns Defendant prepared included numerous fraudulent items. For the first year, 2009, Customer 1 went to Defendant's office for the customer conference where Defendant inquired about Customer 1's job, hunting and fishing activities, and hobbies. Customer 1 answered Defendant's inquiries and also spoke of his interest in playing in a band, but indicated that the band was not a business yet, was playing events for friends, families, and charities, and played such events for free. Customer 1 only provided Defendant with information about the band's sound system. Defendant then prepared the return including a Schedule C, Profit or Loss From Business, identifying Customer 1's business as fishing, musician, and various even though Customer 1 was not performing music as a profession nor fishing in other than a recreational manner. Defendant similarly prepared Customer 1's 2010 and 2011 returns including Schedules C identifying Customer 1 as having a principal business or profession as a musician and a fisherman. Customer 1 does not know how Defendant came up with the information ultimately reported on the returns. The IRS disregarded the Schedule C in full because Customer 1's music activity was not an activity



engaged in for profit and Customer 1's fishing activity was recreational and therefore a non-deductible personal activity. Defendant's fraudulent actions created a Schedule C loss on Customer 1's returns which falsely resulted in the returns reporting that a refund was due to Customer 1.

21. Another customer, "Customer 2," utilized Defendant's services since at least 2005, and specifically utilized Defendant to prepare his 2010 return. Customer 2 was referred to Defendant by a coworker and family friend. Customer 2 went to Defendant's office for the customer conference where Defendant inquired about Customer 2's and his family's travel, family activities, and other unusual activities. Customer 2 provided Defendant with a list of all of his family expenses. As part of his social activities, Customer 2 was a local sports coach for teenagers on Maui and he included various expenses he incurred as a coach as part of the list of expenses he provided to Defendant. Defendant then determined what would be deductible expenses to include on the return. Specifically, Defendant told Customer 2 that some of his coaching expenses were deductible. Customer 2 did not get paid, however, for his service as a coach. Customer 2 also mentioned to Defendant that he had sold some used windsurfing equipment. Defendant then prepared the 2010 return including a Schedule C on which Defendant identified Customer 2 as having a principal business

or profession as a sports coach and involvement with sports training. Defendant included income from the sale of Customer 2's personal windsurfing equipment but also deducted all of Customer 2's expenses associated with his services as a sports coach. The IRS disregarded the Schedule C in full because the sale of personal sports equipment is not taxable income and Customer 2's coaching activity was a volunteer activity that was not a trade or business under the Internal Revenue Code. Defendant's fraudulent actions created a Schedule C loss on Customer 2's return which falsely resulted in the return reporting that a refund was due to Customer 2.

22. Another customer, "Customer 3," also utilized Defendant to prepare his tax returns for several years, one of which was the 2010 tax year. Customer 3 was also referred to Defendant from a friend and coworker. Customer 3 went to Defendant's office for the customer conference where Defendant inquired about Customer 3's hobbies. Customer 3 responded that his main hobby is surfing. The conversation focused on Customer 3's expenses associated with his surfing and not any money Customer 3 earned from surfing. Customer 3 also mentioned that he had a computer for his normal job at a local resort that he used to check for benefits. Customer 3 told Defendant his only expenses were his computer and his surfboards but Customer 3 did not provide Defendant with receipts or information for the

numbers reported on the return. Defendant derived the amount of Customer 3's expenses on his own and then completed Customer 3's 2010 return. Defendant included a Schedule C with Customer 3's 2010 return which identified Customer 3's principal business or profession as competitive sports and which included deductions for all of Customer 3's expenses associated with his surfing. The IRS disregarded the Schedule C in full because Customer 3's surfing activity was not an activity engaged in for profit and instead was a personal hobby. Defendant's fraudulent actions created a Schedule C loss on Customer 3's return which falsely resulted in the return reporting that a refund was due to Customer 3.

#### INJURY TO THE UNITED STATES

23. Defendant's conduct harms the United States because his customers are underreporting and underpaying their tax liabilities. The IRS has examined 542 federal income tax returns that Defendant prepared for customers for the tax years 2007 through 2012, with a total of \$2,200,158 in lost revenue (an average of \$4,059 per return) based on false claims and deductions. If this average deficiency per return was spread over the universe of returns Defendant prepared, the IRS estimates that Defendant's return preparation could have resulted in as much as \$31 million in revenue lost to the United States for returns prepared for tax years 2007 through 2012.

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

25. Defendant further harms the United States because the IRS must devote its limited resources to identifying his customers, ascertaining their correct tax liabilities, recovering any funds erroneously issued, and collecting additional taxes and penalties.

#### INJURY TO DEFENDANT'S CUSTOMERS

26. Defendant's customers have been harmed because they paid Defendant fees to prepare proper tax returns, but Defendant prepared returns that substantially understated his customers' correct tax liabilities or created or inflated improper refunds.

27. As a result of the Defendant's improper actions, many of his customers have been required to file amended returns or undergo audits by the IRS. They have incurred severe, and in most cases unanticipated, financial burdens due to their liability for additional tax beyond the amount reported on their original returns, plus statutory interest.

28. As a result of the Defendant's improper actions, many of his customers will be required to file amended returns or undergo audits by the IRS. They will incur severe, and in most

cases unanticipated, financial burdens due to their liability for additional tax beyond the amount reported on their original returns, plus statutory interest (and perhaps civil penalties).

COUNT I

(Injunction under 26 U.S.C. § 7407)

29. The United States reallages and incorporates by reference paragraphs 1 through 28 of the Complaint.

30. Defendant, by reason of his preparation of federal income tax returns for which he was compensated, is an income tax return preparer within the meaning of 26 U.S.C. § 7701(a)(36).

31. Section 7407 of the Internal Revenue Code (26 U.S.C.) authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under 26 U.S.C. § 6694, which penalizes a return preparer who prepares a return that contains an understatement of tax liability or overstatement of a refund that is due to an unreasonable position which the return preparer knew or should have known was unreasonable, or engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

32. In order for a court to issue such an injunction, the court must find (1) that the preparer has engaged in such

conduct, and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

33. The court may permanently enjoin the person from further acting as a federal tax preparer if it finds that a preparer has continually or repeatedly engaged in such conduct, and the court further 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.

34. Defendant has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by either (a) recklessly or intentionally disregarding rules and regulations in preparing the return of another person, resulting in an understatement of federal tax liability for that person; or (b) willfully or recklessly understating the federal tax liability of another person in preparing the return of that person; or both.

35. Defendant's continual and repeated violations of Section 6694 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under Section 7407.

36. If Defendant is not enjoined, he is likely to continue to prepare and file false and fraudulent tax returns, causing economic loss to the United States, causing the United States to commit finite, scarce, and unrecoverable resources to the

examination of Defendant and his customers, and exposing his customers to large liabilities that include penalties and interest.

37. Defendant's continual and repeated conduct subject to an injunction under 26 U.S.C. § 7407, including his audacious and repeated bogus claims of expenses and deductions, including fictitious business expenses for personal activities, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent his interference with the proper administration of the internal revenue laws. Thus, Defendant should be permanently barred from acting as a tax return preparer.

#### COUNT II

(Injunction under 26 U.S.C. § 7402(a)—Necessary to Enforce the Internal Revenue Laws)

38. The United States reallages and incorporates by reference paragraphs 1 through 37 of the Complaint.

39. Section 7402 of the Internal Revenue Code (26 U.S.C.) authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

40. Defendant, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

41. Unless enjoined, Defendant is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Defendant is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them, much of which will never be discovered and recovered. The United States will also suffer irreparable injury because it will have to devote substantial unrecoverable time and resources auditing Defendant's customers to detect future returns understating the customers' liability or overstating their refund.

42. While the United States will suffer irreparable injury if Defendant is not enjoined, he will not be harmed by being compelled to obey the law.

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

44. The Court should therefore 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 Defendant has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 and has 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 26 U.S.C. § 7407 to bar him from acting as a federal tax return preparer and from engaging in conduct subject to penalty under 26 U.S.C. § 6694;

B. That the Court find that Defendant has engaged in conduct that substantially 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 26 U.S.C. § 7402(a);

C. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7407, enter a permanent injunction prohibiting Defendant, and all those in active concert or participation with him, from:

- (1) acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;

- (2) preparing or assisting in preparing or filing federal tax returns, amended returns, or other related documents or forms that they know or reasonably should know will result in an understatement of tax liability or the overstatement of federal tax refund(s);
- (3) engaging in any other activity subject to penalty under 26 U.S.C. § 6694 or any other penalty provision in the Internal Revenue Code; and
- (4) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

D. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7407, enter an injunction requiring that Defendant, 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 he prepared a federal tax return since January 1, 2008, to inform them of the permanent injunction entered against Defendant, including sending a copy of the order of permanent injunction but not enclosing any other documents or enclosures unless agreed to by counsel for the United States or approved by the Court, and file with the Court a sworn certificate stating that he has complied with this requirement;

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7407, enter an injunction requiring Defendant 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 he prepared federal tax returns or claims for refund since January 1, 2008;

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7407, enter an injunction requiring Defendant to provide a copy of the Court's order to all of the principals, officers, managers, employees, and independent contractors of his tax return preparation business within fifteen days of the Court's order, and provide to counsel for the United States within 30 days a signed and dated acknowledgment or receipt of the Court's order for each person to whom he provided a copy of the Court's order;

G. That the United States be entitled to conduct discovery to monitor Defendant's compliance with the terms of any permanent injunction entered against him;

H. That the Court retain jurisdiction over Defendant and over this action to enforce any permanent injunction entered against him; and

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

DATED this 22nd day of October, 2013.

Respectfully submitted,

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United States Attorney  
HARRY YEE (3790)  
Asst. United States Attorney



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