

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

UNITED STATES OF AMERICA,)	
)	Case No. 3:13cv268-MPM-SAA
Plaintiff,)	
)	
v.)	
)	
ERIC HARDAWAY,)	
aka ERIC BRITTENUM, and)	
YVONNE HARDAWAY, individually and)	
doing business as HARDAWAY TAXX,)	
)	
Defendants.)	
_____)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America complains and alleges as follows:

1. This is a civil action brought by the United States under IRC (26 U.S.C.) §§ 7402(a), 7407, and 7408 to enjoin Defendants Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx (hereinafter “Defendants”), and any other person(s) acting in concert or collusion with them from:

- a. Acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
- b. Preparing or assisting in the preparation of federal tax returns, amended returns, or other related documents and forms that understate federal tax liability or overstate a federal tax refund based on positions that they know or should know are unreasonable, as prohibited by IRC § 6694;
- c. Using a false or fictitious Electronic Filing Identification Number (EFIN), Employer Identification Number (EIN), Taxpayer Identification Number (TIN), Preparer Tax Identification Number (P-TIN), social security number (SSN), or any other federally issued identification number to file or remit federal income tax returns, as prohibited by IRC § 6695(a);
- d. Engaging in any other activity subject to penalty under IRC §§ 6694, 6695, or 6701;

- e. Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme; and
- f. Engaging in conduct that violates the standards of 31 U.S.C. § 330.

2. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), 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 IRC §§ 7401, 7407, and 7408.

Jurisdiction and Venue

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

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

Defendants

5. Yvonne Hardaway is a paid federal tax return preparer in Holly Springs, MS.

6. Yvonne Hardaway is the sole proprietor of Hardaway Taxx, located at 236 Shelby Drive, Holly Springs, MS 38635. Yvonne Hardaway, doing business as Hardaway Taxx, prepares federal tax returns for others.

7. Eric Hardaway, aka Eric Hardaway Brittenum, is a paid federal tax return preparer in Holly Springs, MS. Eric Hardaway is an employee or associate of Yvonne Hardaway and/or Hardaway Taxx.

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

Fraudulent Fuel Tax Credit Deductions

9. Defendants have prepared numerous blatantly fraudulent federal income tax returns for

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

10. During processing year 2012, Hardaway Taxx prepared 89 tax returns or amended tax returns that claimed a frivolous fuel tax credit. Based upon an investigation conducted by the Internal Revenue Service, the United States believes that Hardaway Taxx prepared an additional 67 tax returns or amended tax returns, during processing year 2012, that claimed a frivolous fuel tax credit. While these additional returns do not list a paid tax preparer, the returns were either mailed to the IRS in an envelope with Hardaway Taxx's address listed as the return address or contain in the remarks section of the return the same or similar language and font as found on the 89 tax returns which identify Hardaway Taxx as the paid preparer.

11. In total, Hardaway Taxx prepared 156 tax returns or amended tax returns, in processing year 2012, which claimed a false fuel tax credit, resulting in more than \$321,000 of erroneous refunds issued to taxpayers.

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

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

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

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

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

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

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

16. In short, the fuel tax credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways and does not apply to any non-business use.

Defendants' Fraudulent Claims of the Fuel Tax Credit

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

18. Defendants have prepared false IRS Forms 4136 for customers, falsely claiming that Those customers had used gasoline for qualified off-highway business purposes.

19. The following chart shows five examples of Defendants' fraudulent fuel tax credit claims on amended tax returns filed in 2012:

Initials, city, and state of customer	Amount of off-highway business use of gasoline claimed on Form 4136¹	Cost of claimed business use of gasoline²	Estimated yearly/daily mileage	Adjusted Gross Income reported on Amended Return	Amount of gasoline credit	Refund Requested
B.F., Hernando, MS	5,000	\$15,000	50,000 miles per year	\$25,498	\$2,250	\$2,469
A.S., Memphis, TN	5,400	\$16,200	54,000 miles per year	\$27,416	\$2,430	\$2,430
M.S., Memphis, TN	5,300	\$15,900	53,000 miles per year	\$27,505	\$2,385	\$3,665
T.J., Walls, MS	3,500	\$10,500	35,000 miles per year	\$13,327	\$1,575	\$1,575
C.R., Memphis, TN	5,900	\$17,200	59,000 miles per year	\$20,998	\$2,665	\$2,665

20. On the returns in the table above (and on other returns), Defendants fraudulently claimed that their customers purchased large quantities of fuel for off-highway business purposes. For example, Eric Hardaway claimed that T.J. purchased 3,500 gallons of gasoline in 2009, which would have cost \$10,500. However, T.J.'s adjusted gross income for this year was only \$13,327. Thus, T.J. would have had to spend nearly all of the income T.J. reported in 2009 on gasoline Eric Hardaway claimed T.J. used. Furthermore, to use that volume of gasoline, assuming mileage

¹ Estimated mileage based on 10 miles per gallon.

² Estimated total cost based on the average price of gasoline at \$3.00 per gallon.

of 10 miles per gallon, T.J. would have to have driven 35,000 miles—off-highway—during 2009. This shows the blatantly fraudulent nature of Defendants’ preparation of federal income tax returns abusing the fuel tax credit.

Harm Caused by Defendants

21. Defendants’ customers have been harmed by their actions because they paid Defendants fees to prepare proper tax returns, but Defendants’ improperly created or inflated tax refunds. Many of Defendants’ customers may be liable to pay back the refunds they received, plus penalties and interest.

22. Defendants’ preparation of false and fraudulent tax returns has resulted in customers claiming and, to the extent that the Internal Revenue Service did not detect beforehand the fraudulent returns, receiving substantial federal income tax refunds to which they are not entitled. The IRS has identified 156 income tax returns, including amended returns, filed in 2012 that were prepared by a preparer at Hardaway Taxx, either Yvonne or Eric, which contain false, fictitious, or frivolous claims for fuel tax credit, and which resulted in the United States issuing over \$321,000 in erroneous refunds.

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

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

25. Defendants further harm the United States because the Internal Revenue Service must

devote its limited resources to identifying their customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. The IRS estimates that its administrative costs associated with this scheme thus far exceed \$26,000.

**Count I:
Injunction under IRC § 7407**

26. The United States incorporates by reference the allegations in paragraphs 1 through 25.

27. Section 7407, IRC, authorizes a district court to enjoin a tax return preparer from, *inter alia*, (1) engaging in conduct subject to penalty under IRC § 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; (2) engaging in conduct subject to penalty under IRC § 6695, which penalizes a return preparer who does not sign the return or provide his or her tax preparer identification number; or (3) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

28. In order for a court to issue such an injunction, the court must find (1) that the preparer has engaged in conduct subject to penalty under IRC §§ 6694 or 6695 and (2) that injunctive relief is appropriate to prevent reoccurrence of the conduct.

29. The court may permanently enjoin the person from further acting as a federal tax return 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.

30. Defendants have continually and repeatedly engaged in conduct subject to penalty under

IRC § 6694 by preparing federal income tax returns that understate their customers' liabilities and/or overstate their refunds that based on positions that Defendants knew, or should have known, were unreasonable and reckless. Specifically, it was unreasonable and reckless for Defendants to prepare returns claiming fraudulent fuel tax credits for off-highway business uses which improperly understated their customers' tax liabilities or overstated their refunds.

31. Defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6695 by willfully and knowingly failing to sign returns prepared by them for their customers.

32. Defendants' repeated violations of IRC §§ 6694 and 6695 fall within IRC § 7407(b)(1)(A) and thus are subject to an injunction under IRC § 7407.

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

34. Defendants continued and repeated conduct subject to an injunction under IRC § 7407 demonstrates that a narrow injunction, prohibiting only specific conduct, would be insufficient to prevent their interference with the proper administration of the internal revenue laws. For example, when clients complained to Defendants about frivolous return penalties being assessed by the IRS based on the frivolous fuel tax credit claims, Defendants often amended the returns and, instead of eliminating the frivolous fuel tax credit claim, continued to claim the frivolous fuel tax credit at a slightly lower amount. Thus, Defendants should be permanently barred from acting as tax return preparers.

**Count II:
Injunction under IRC § 7408**

35. The United States incorporates by reference the allegations in paragraphs 1 through 34.

36. Section 7408(a)-(c), IRC, authorizes a district court to enjoin any person from engaging

in conduct subject to penalty under IRC § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

37. Section 6701(a), IRC, penalizes any person who aids or assists in the preparation of any portion of a federal tax return, refund claim, or other document knowing (or having a reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

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

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

Count III:

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

40. The United States incorporates by reference the allegations of paragraphs 1 through 39.

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

42. Defendants, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws by preparing and filing tax returns which intentionally claim false fuel tax credits and artificially create and inflate unwarranted refunds to their customers.

43. Unless enjoined, Defendants are likely to continue engaging in this improper conduct. If

Defendants are not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully issuing federal income tax refunds to individuals not entitled to receive them, much of which will never be discovered or recovered. The United States will also suffer irreparable injury because it will have to devote substantial unrecoverable time and resources auditing Defendants' customers to detect future returns understating their customers' tax liabilities or overstating their refunds.

44. While the United States will suffer irreparable injury if Defendants are not enjoined, Defendants will not be harmed by being compelled to obey the law.

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

46. The Court should impose injunctive relief under IRC § 7402(a).

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

A. That the Court find that Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, have continually and repeatedly engaged in conduct subject to penalty under IRC §§ 6694 and 6695, and have continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the administration of the tax laws, and that injunctive relief is appropriate under IRC §§ 7402 and 7407 to bar Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, from acting as federal tax return preparers to prevent reoccurrence of that conduct;

B. That the Court find that Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, have engaged in conduct subject to penalty

under IRC § 6701, and that injunctive relief is appropriate under IRC §§ 7402 and 7408 to bar Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, to prevent reoccurrence of that conduct;

C. That the Court find that Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, have 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 IRC § 7402(a);

D. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, and all those in active concert or participation with them from:

1. Acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
2. Preparing or assisting in the preparation of federal tax returns, amended returns, or other related documents and forms that understate federal tax liability or overstate a federal tax refund based on positions they know or should know are unreasonable, as prohibited by IRC § 6694;
3. Using a false or fictitious Electronic Filing Identification Number (EFIN), Employer Identification Number (EIN), Taxpayer Identification Number (TIN), Preparer Tax Identification Number (P-TIN), social security number (SSN), or any other federally issued identification number to file or remit federal income tax returns, as prohibited by IRC § 6695(a);
4. Engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, or 6701;
5. Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme; and
6. Engaging in conduct that violates the standards of 31 U.S.C. § 330.

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring that Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, within 30 days of entry of the injunction, contact by United States mail and,

if an e-mail address is known, by e-mail, all persons for whom they prepared a federal tax return to inform them of the permanent injunction entered against them, including sending a copy of the executed permanent injunction against them, 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 they have complied with this requirement;

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

G. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Defendants to produce to counsel for the United States within 30 days copies of all federal income tax returns and amended returns they have prepared and/or filed since January 1, 2009;

H. That the Court retain jurisdiction over Eric Hardaway, aka Eric Brittenum, and Yvonne Hardaway, individually and doing business as Hardaway Taxx, and over this action to enforce any permanent injunction entered against Defendants;

I. That the United States be entitled to conduct discovery to monitor Defendants' compliance with the terms of any permanent injunction entered against them; and

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

Date: October 29, 2013

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General

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