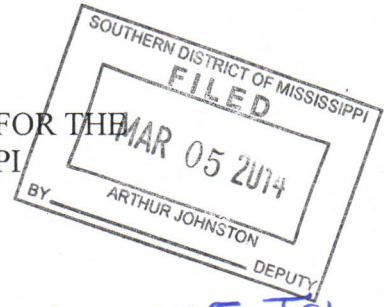


IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 KAVIVAH BRANSON, aka KAVIVAH)
 BRADLEY, INDIVIDUALLY)
 AND DOING BUSINESS AS)
 BRANSON TAX SERVICE,)
)
 Defendants.)
 _____)

Case No. 3:14cv 185 TSL-Jmk

COMPLAINT

The United States of America 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 Kavivah Branson, aka Kavivah Bradley, and her company, Branson Tax Service (hereinafter “Branson”), and any other person(s) working in concert or collusion with her, from directly or indirectly:

- 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. Engaging in any other activity subject to penalty under IRC §§ 6694, 6695, or 6701; and
- c. Engaging in conduct that substantially interferes with the proper administration and enforcement of the tax laws.

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 of the United States pursuant to 26 U.S.C. §§ 7401, 7407, and 7408.

Jurisdiction and Venue

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

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 26 U.S.C. § 7407(a) because a substantial part of the events giving rise to this claim occurred within this judicial district.

Summary of Defendant's Activities

5. Branson resides at 203 Indiansummer Ln., Clinton, MS 39056.

6. Branson prepares income tax returns, including Form 1040, "Individual Income Tax Return," for other taxpayers from an office location at 1700 Terry Rd. Ste. 24, Jackson, MS 39204.

7. Since 2009, Branson has prepared tax returns under the name "Branson Tax Service."

8. Branson has an associate degree in education science. She learned income tax preparation through Drake Software and gained some experience in accounting while working for the city of Jackson, MS.

9. IRS records show that Branson prepared at least 2,401 returns from January 1, 2009 to February 7, 2014.

10. Of these 2,401 returns, 2,397 (99.8%) claimed a refund, and 1,880 (78%) returns claimed the Earned Income Tax Credit (EITC).

11. The EITC is a refundable tax credit available to certain low-income individuals. The amount of the credit is based on the taxpayer's income, filing status, and number of

qualifying children. Because the EITC is a refundable credit, even taxpayers who report a federal tax liability below zero can receive a refund up to the amount of the credit claimed.

Lack of due diligence in determining Earned Income Tax Credit

12. Branson has continually and repeatedly failed to comply with the due diligence requirements set forth in 26 U.S.C. § 6695(g), and accompanying regulations, for determining eligibility and amount of these EITCs. Those requirements include, *inter alia*, the duty to make reasonable inquiries if the information provided by the taxpayer appears to be incorrect, incomplete, or inconsistent, as well as a duty to contemporaneously document the inquiries made and the responses to these inquiries. 26 C.F.R. § 1.6695-2(b)(3)(i). Section 6695(g) of the Internal Revenue Code currently imposes a \$500 penalty for each instance where a return preparer fails to comply with the due diligence requirements found in Treasury Regulation § 1.6695-2(b).

13. On January 18, 2012, the IRS conducted an investigation of Branson for returns she prepared during the 2010 filing season to determine whether the EITC due diligence requirements were being met as to both the eligibility of her customers to claim the EITC, and whether the amount of EITC claimed was correct. The IRS reviewed 174 returns and customer files and determined that Branson failed to meet the due diligence requirements with regard to all 174 returns. Specifically, the IRS found that Branson failed to document the questions she asked her customers, or the responses they provided regarding their eligibility to claim the EITC.

14. On March 26, 2012, a delegate of the Secretary of Treasury, under § 6695(g), assessed penalties in the amount of \$17,400 against Branson for her failure to retain information in her customer files to document what, if any, questions Branson asked about her customers' Schedule C businesses or dependents claimed in connection with the EITC as required by Treas.

Reg. § 1.6695-2(b)(3), (4). Branson agreed to the imposition of penalties against her, and as of January 24, 2014, owes \$7,962.24 on account of the penalty assessment.

15. On April 2, 2013, an IRS Revenue Agent interviewed Branson to follow up on the issues which led to the assessment of penalties against her. The Revenue Agent also reviewed 20 customer files and returns prepared during 2012 that Branson provided. Based on the interview and the customer files Branson provided, the Revenue Agent determined that Branson continues to prepare returns while failing to meet her due diligence requirements.

16. For example, all twenty case files included returns that were accompanied by a Schedule C—Profit or Loss From Business. However, none of the files contained a narrative indicating that Branson made any attempt to determine whether a Schedule C business even existed, and if so, the veracity of the income and expense figures reported. Also, 15 of the 20 case files contained returns reporting at least one of the qualifying dependents was disabled, yet none of the files contained a narrative or documentation indicating that Branson made any attempt to confirm the nature or existence of the alleged disability. These failures show a continued violation of Treas. Reg. § 1.6695-2(b)(3), (4).

False Education Credits

17. In addition to Branson's consistent and repeated disregard of the EITC due diligence requirements; she also appears to fabricate education expenses as part of a scheme to falsely claim refundable education credits, particularly the American Opportunity Credit, on federal income tax returns she prepares.

18. Qualified expenses for the American Opportunity Credit include tuition, required fees, and course materials related to the enrollment or attendance at an eligible post-secondary educational institution. The educational institution must file a Form 1098-T, "Tuition

Statement,” with the IRS to report payments received, or amounts billed, for qualified tuition and related expenses for each student. Like the EITC discussed above, the American Opportunity education credit can generate a refund for qualifying taxpayers even if they pay no tax.

19. Branson continuously and repeatedly files tax returns for her customers claiming a refundable education credit without a Form 1098-T. For example, of the 776 tax returns that the IRS identified as being prepared by Branson for the 2009 through 2011 tax years, 156 claimed a refundable education credit. Of these 156 returns, only 22 returns (14%) had a corresponding Form 1098-T filed with the IRS by an educational institution reporting the claimed education expenses. The lack of a Form 1098-T filed with the IRS by a great majority of the returns prepared by Branson indicates that she is preparing returns that she knew or should have known would result in an overstatement of her customer’s tax refund in violation of 26 U.S.C. § 6694(a).

20. This pattern continued into the 2012 tax return filing season. Of the twenty case files provided to the IRS Revenue Agent by Branson in April 2013, all claimed a refundable education credit, yet none contained any documentation or information substantiating this claim, such as a Form 1098-T. Indeed, IRS records confirmed that no Form 1098-T from an educational institution was ever submitted. Again, the lack of Form 1098-T on file with the IRS indicates that Branson prepared returns she knew improperly claimed unsupported educational credits to understate her customers’ reported tax liability.

21. In addition to preparing tax returns which claim unsubstantiated education credits, Branson brazenly prepares returns claiming education credits on behalf of children who could not possibly be attending college. For example, one of the twenty customer files Branson provided to the IRS Revenue Agent reveals that she prepared a 2011 tax return for “N.R.” which

listed two children, “R.R. and S.A.” The Earned Income Tax Credit worksheet Branson prepared to support N.R.’s EITC claim lists R.R.’s birth year as 2011 and S.A.’s as 2008. Despite reporting that these children were both under the age of four in 2011, Branson claimed American Opportunity education credit for qualifying expenses N.R. purportedly incurred to educate an infant and a toddler. Accepting as true the birth years of R.R. and S.A. listed on the return Branson prepared, Branson willfully or recklessly prepared a return she knew understated N.R.’s tax liability in violation of section 6694(b).

Harm to the United States

22. Branson’s practices have resulted in the loss of significant tax revenue through tax understatements and claims for refundable credits her customers are not eligible to take.

23. In addition, Branson’s actions have forced the United States to expend significant resources to examine and correct the returns she prepares including an investigation of Branson’s compliance with the EITC due diligence requirement in January 2012, and a follow up investigation in April 2013 that showed the penalties assessed against her did not motivate her to adopt measures to ensure her customers’ returns were accurate.

24. In some instances, Branson’s customers had taxes withheld during the reporting years and Branson’s understatement of those customers’ liabilities caused the United States to issue refunds that the customers were not entitled to receive.

25. Because returns prepared by Branson wrongfully claim EITC and education credits, which are refundable, the returns prepared by Branson caused the United States to make a tax refund payment to many individuals who had little or no income tax liability, had made little or no payments, and were actually not entitled to any refund.

26. The IRS has examined at least 287 returns prepared by Branson to determine whether the EITC plus other refundable credits, such as education credits, were properly claimed. Of those 287 returns, the IRS adjusted approximately 97% of the returns by an average of \$5,006 for a total adjustment of \$1,436,725. Based on these examinations, the IRS estimates that the loss to the government from Branson's return preparation from 2009 through 2014 could exceed \$12 million.

COUNT I: INJUNCTION UNDER 26 U.S.C. § 7407 FOR CONDUCT SUBJECT TO PENALTY UNDER 26 U.S.C. §§ 6694 AND 6695

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

28. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a person who is a tax return preparer from engaging in certain prohibited conduct or from further acting as a tax return preparer. The prohibited conduct justifying an injunction includes, inter alia, the following:

(a) Engaging in conduct subject to penalty under 26 U.S.C. § 6694, which penalizes a tax return preparer who prepares a return that contains an understatement of tax liability or an overstatement of a refund due to an unreasonable position that the return preparer knew or should have known was unreasonable;

(b) Engaging in conduct subject to penalty under 26 U.S.C. § 6695(g), which penalizes a tax return preparer for failing to exercise due diligence in determining eligibility for the EITC; and

(c) Engaging in any other fraudulent or deceptive conduct which substantially interferes with the proper administrations of the Internal Revenue laws.

29. In order for a court to issue such an injunction, the court must find that:

- (a) The tax return preparer engaged in the prohibited conduct; and
- (b) Injunctive relief is appropriate to prevent the recurrence of such conduct.

30. If a tax return preparer's conduct is continual or repeated and the court finds that a narrower injunction would not be sufficient to prevent the preparer's interference with the proper administration of the internal revenue laws, the court may permanently enjoin the person from acting as a tax return preparer. *See* 26 U.S.C. § 7407(b).

31. Branson engaged in conduct subject to penalty under 26 U.S.C. § 6695(g) by failing to exercise due diligence in determining eligibility for the EITC. Among other violations, Branson has failed to keep a proper record of the customer's eligibility for the EITC and obtain verification that a person claimed as a qualifying child is eligible.

32. Branson has continued to engage in the behavior described in this complaint even after being informed in January of 2012 that she would be penalized for failing to meet the due diligence requirements and being assessed a penalty in May 2012.

33. An IRS review of 20 customer files provided by Branson, in April 2013, revealed all 20 files did not have proper supporting documentation to demonstrate compliance with the due diligence requirements under Treas. Reg. § 1.6695-2(b)(3), (4). That review also showed that Branson knowingly claimed education credits that were not supported by any evidence and that her unreasonable position resulted in an understatement of tax that was subject to penalty 26 U.S.C. § 6694(a).

34. Branson's continuous and repeated violation of 26 U.S.C. §§ 6694 and 6695 substantially interferes with the administration of the internal revenue laws. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Branson is likely to continue preparing false federal income tax returns.

35. As described above, the IRS has conducted multiple interviews and determined that Branson failed to comply with the EITC due diligence rules and accordingly assessed penalties against Branson. Despite these enforcement efforts, Branson has continued to prepare improper returns.

36. A narrower injunction would be insufficient to prevent Branson's further interference with the administration of the federal tax laws. For years, Branson has improperly claimed the EITC for her customers, and the most recent review of her activities shows she is expanding her abuse of the tax code by claiming false education credits. We suspect the IRS may not yet have identified all of the schemes used by Branson to understate her customers' liabilities or inflate their refund claims, but, the fact-intensive nature of the false positions reported on returns prepared by Branson, e.g. whether a person is totally and permanently disabled, imposes a heavy burden on the IRS to examine and investigate those positions. This is especially true where, as here, Branson has failed to maintain adequate records that will assist the IRS in determining the veracity of the tax returns she prepares.

37. Failure to permanently enjoin Branson will require the IRS to spend additional resources to uncover all of Branson's future schemes. The harm resulting from these schemes includes both the expenditures of these resources and the revenue loss caused by the improper credits Branson claims on returns she prepares. Accordingly, only a permanent injunction is sufficient to prevent future harm. Branson should be permanently enjoined from acting as a tax return preparer.

COUNT II INJUNCTION UNDER 26 U.S.C. §7408 FOR CONDUCT SUBJECT TO PENALTY UNDER 26 U.S.C. § 6701

38. The United States incorporates by reference the allegations contained in paragraphs 1 through 37.

39. 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.

40. Branson has engaged in conduct subject to penalty under 26 U.S.C. § 6701 by preparing or directing the preparation of income tax returns that claim a tax credit when she knew that the taxpayer was not entitled to the credit, or the credit in the full amount claimed.

41. Branson's repeated actions such as those described in paragraphs 12 through 26, above, fall within 26 U.S.C. § 7408(c)(1) because they violate 26 U.S.C. § 6701, and injunctive relief is appropriate to prevent recurrence of this conduct.

42. Accordingly, Branson should be permanently enjoined from preparing any returns that improperly claim or inflate a claim to a tax credit.

COUNT III INJUNCTION UNDER 26 U.S.C. §7402 FOR UNLAWFUL INTERFERENCE WITH THE ENFORCEMENT OF INTERNAL REVENUE LAWS

43. The United States incorporates by reference the allegations contained in paragraphs 1 through 42.

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

45. Branson has repeatedly and continually engaged in conduct that interferes substantially with the administration and enforcement of internal revenue laws.

46. If Branson continues to act as a tax return preparer, her conduct will result in irreparable harm to the United States, and the United States has no adequate remedy at law.

47. Branson's conduct has caused and will continue to cause substantial tax losses to the United States Treasury, much of which may be undiscovered and unrecoverable. Moreover, unless Branson is enjoined from preparing returns, the IRS will have to devote substantial and unrecoverable time and resources auditing her customers individually to detect false, fraudulent, or overstated refund claims in future returns.

48. The detection and audit of erroneous tax credits claimed on returns prepared by Branson will be a significant burden on IRS resources.

WHEREFORE, the plaintiff, United States of America, respectfully prays for the following:

A. That the Court find that Kavivah Branson has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695(g) and that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent recurrence of that conduct;

B. That the Court find that Branson 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;

C. That the Court find that Branson has repeatedly and continually engaged in conduct that substantially interferes with the proper enforcement and administration of the internal revenue laws, and that injunctive relief against Branson is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a);

D. That the Court enter a permanent injunction prohibiting Branson and her company, Branson's Tax Service, or any other person working in concert or participation with her from directly or indirectly:

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. Engaging in any other activity subject to penalty under IRC §§ 6694, 6695, or 6701; and
3. Engaging in conduct that substantially interferes with the proper administration and enforcement of the tax laws.

E. That the Court, in addition to a permanent bar on preparing or assisting to prepare returns or other related documents, require Branson to:

1. At her own expense, notify each person for whom she prepared federal income tax returns or any other federal tax forms after January 1, 2009, of this action and provide each person with a copy of the final injunction entered against her, as well as a copy of the Complaint setting forth the allegations as to how Branson fraudulently prepared federal income tax returns; and
2. Provide notice to the public via publication, and the notice is to be published in all periodicals in which Branson advertised her tax preparation services from 2009 through 2014; and the notice shall state that Kavivah Bradley, aka Kavivah Branson, individually and doing business as Branson Tax Service has been enjoined by this Court from preparing tax returns for others and shall provide the case caption and case number of this civil action;
3. Turn over to the United States copies of all returns or claims for refund that she prepared after January 1, 2009;
4. Turn over to the United States a list with the name, address, telephone number, email address, and social security number or other taxpayer identification number of all customers for whom she prepared returns after January 1, 2009;
5. File a sworn statement with the Court evidencing her compliance with the foregoing directives within forty-five (45) days of entry of the final injunction in this action; and
6. Keep records of her compliance with the foregoing directives, which may be produced to the Court, if requested, or the United States pursuant to paragraph F, below;

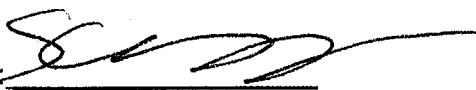
F. That the Court enter an order allowing the United States to monitor Branson's compliance with the injunction, and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

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

Date: March 5, 2014

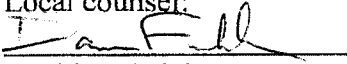
Respectfully submitted,

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