

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

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | Case No. |
| |) | |
| v. |) | |
| |) | |
| ERNICE JOSEPH, |) | |
| PRIMO TAX SERVICE, INC., and |) | |
| EBENEZER TAX SERVICES, INC., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America alleges as follows:

1. The United States brings this action to restrain and enjoin Defendants Ernice Joseph, his businesses, including Primo Tax Service, Inc., and Ebenezer Tax Services, Inc., and all those acting in concert with or under their direction and/or control, from:

- a. preparing or assisting in the preparation of federal income tax returns, amended returns, and other related documents and forms for others;
- b. preparing or assisting in the preparation of federal tax returns that they know will result in the understatement of any tax liability or the overstatement of federal tax refunds;
- c. engaging in any activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700, and 6701; and

- d. engaging in any fraudulent or deceptive conduct which substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. This action is authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of a delegate of the Attorney General of the United States.

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

4. Venue is proper in this Court under 26 U.S.C. §§ 7407 and 7408 and 28 U.S.C. § 1391(b) because the defendants reside within this District, they have engaged in specified conduct subject to penalty within this District, and a substantial part of the events or omissions which give rise to the United States' claims in this action occurred within this District.

5. Defendant Ernice Joseph resides in Broward County and does business in Miami-Dade County, Florida.

6. Defendant Ebenezer Tax Services, Inc. is a corporation registered to do business in the state of Florida. Its registered agent for service of process is Ernice Joseph.

7. Defendant Primo Tax Service, Inc. is a corporation registered to do business in the state of Florida. Its registered agent for service of process is Ernice Joseph.

Defendants' Fraudulent and Deceptive Conduct

8. Ernice Joseph is a paid tax-return preparer who has been preparing income tax returns for customers since around 2003. He obtained a preparer tax identification number ("PTIN") prior to 2009, but it expired. He currently has an electronic filing identification

number (“EFIN”). Joseph owns and operates multiple tax return preparation businesses in the Southern District of Florida, including Ebenezer Tax Services, Inc. and Primo Tax Service, Inc. Joseph prepares returns himself and also has a staff of paid preparers who prepare returns at those businesses.

9. As alleged in more detail below, the returns prepared by Joseph and his businesses seek fraudulent tax refunds for customers by fabricating Schedule C business income and expenses, checking the wrong filing status boxes, and claiming credits to which those customers are not entitled.

Ebenezer Tax Services

10. Joseph has owned and operated Ebenezer Tax Services, Inc. in the Miami area since 2007. Ebenezer Tax Services prepared more than 8,000 returns between 2010 and 2013 for the tax years 2009 through 2012. 99 percent of those returns claimed a refund. Ebenezer does not have its own PTIN or EFIN, although the preparers who work there maintain their own PTIN’s and use Joseph’s EFIN.

11. To date, the IRS has examined 76 returns prepared by Joseph and/or Ebenezer Tax Services for customers for the tax years 2011, 2012, and 2013. The examinations revealed deficiencies in the reported tax on 74 of those 76 returns, with an average deficiency of \$4,687.62. Based on the number of returns Ebenezer has prepared, the IRS estimates the revenue loss to the Government from Joseph’s/Ebenezer’s practices could exceed \$20 million. The following are examples of the schemes employed at Ebenezer.

12. Ebenezer Tax Services prepared a 2012 tax return for “A.W.” that included numerous fraudulent items. Although A.W. did not operate a business, Ebenezer prepared and filed with her return a Schedule C – “Profit or Loss From Business” – that reported non-existent

gross receipts of \$9,960 and deducted fictitious business expenses of \$1,510. By claiming fictitious business income for A.W., Ebenezer was able to fraudulently increase the Earned Income Tax Credit that A.W. received. Because this is a refundable credit, it increased the amount of A.W.'s refund. Ebenezer also claimed an American Opportunity credit of \$1,998 to which A.W. was not entitled.

13. Ebenezer Tax Services prepared the 2011 and 2012 tax returns for "S.B." that included numerous similarly fabricated items. Although S.B. occasionally was paid by neighbors to cut their hair, she provided no records to Ebenezer and did not tell the preparer the amounts she received from that activity. Nevertheless, Ebenezer prepared and filed with her 2011 return a Schedule C – "Profit or Loss From Business" – that fabricated gross receipts of \$10,002 and deducted fictitious business expenses of \$1,070. The return that Ebenezer prepared for S.B. for 2012 fabricated gross receipts of \$9,523 and deducted fictitious business expenses of \$640. By fabricating and inflating business income for S.B., Ebenezer was able to fraudulently increase the Earned Income Tax Credit that S.B. received in each of those years. Because this is a refundable credit, it increased the amount of S.B.'s refund. On the returns it prepared for 2011 and 2012, Ebenezer also claimed an American Opportunity credit of \$1,000 and fuel excise tax credits of \$836 and \$1,079, respectively, even though S.B. was not entitled to any of those credits. Finally, the returns prepared by Ebenezer for S.B. for 2011 and 2012 claimed a filing status of "Head of Household" even though S.B. informed the preparer that she lived with her parents in both of those years.

14. Ebenezer Tax Services prepared the 2011 and 2012 tax returns for "R.J." that also included many of the same kinds of fabricated items. Although R.J. had no business of any kind, Ebenezer prepared and filed with her 2011 return a Schedule C – "Profit or Loss From Business"

– that fabricated gross receipts of \$18,560 and deducted fictitious business expenses of \$1,102.

The return that Ebenezer prepared for R.J. for 2012 fabricated gross receipts of \$15,758 and deducted fictitious business expenses of \$1,673. By fabricating this business income for R.J., Ebenezer was able to fraudulently increase the Earned Income Tax Credit, and hence, the refund, that R.J. received. On the returns it prepared for R.J. for 2011 and 2012, Ebenezer also claimed American Opportunity credits of \$1,999 and \$1,000 and fuel excise tax credits of \$731 for 2011, even though S.B was not entitled to any of those credits.

15. Joseph prepared the prepared the 2011 and 2012 tax returns for “S.D.” that also included numerous fabricated items. Although S.D. had no business of any kind, Joseph prepared and filed with her 2011 return a Schedule C – “Profit or Loss From Business” – that fabricated gross receipts of \$2,652 and deducted fictitious business expenses of \$8,558. The return that Joseph prepared for S.D. for 2012 fabricated gross receipts of \$2,100 and deducted fictitious business expenses of \$8,458. The effect of fabricating these net business losses for S.D. was to reduce her taxable income, and hence, the tax due. That return also overstated S.D.’s Earned Income Tax Credit, and hence, the refund, that she received. In addition, the 2011 and 2012 returns prepared by Joseph claimed other credits to which S.D. was not entitled, thereby further inflating her refunds. These included American Opportunity credits of \$1,981 and \$1,000, nonrefundable education credit of \$209 in 2011, and fuel excise tax credits of \$909 for 2011.

16. Ebenezer deducts its return-preparation fees from its customers’ tax refunds. To do so, Ebenezer directs the IRS to remit the customers’ refund checks directly to Ebenezer’s office. Ebenezer does not disclose the fee to the customer, but simply remits the net refund. For example, the return of “A.W.” for 2011 prepared by Ebenezer claimed a refund of \$9,555, but

she received only approximately \$7,200. Likewise, “R.J.” recalled receiving about \$4,500 for 2011 out of her refund of \$5,506, and the fee deducted without explanation from her 2012 return and retained by Ebenezer was a similar amount.

Primo Tax Service

17. Since late 2011, Ernice Joseph has co-owned another tax return preparer business, Primo Tax Service, Inc., with Maggie Saiz as his partner. The United States has already filed suit in this Court to permanently enjoin Maggie Saiz (who does most of the return preparation at Primo) from preparing tax returns for others.

18. Primo’s customers consist mainly of Spanish-speaking people in and around Hialeah, Florida. Primo seeks fraudulent tax refunds for customers by fabricating Schedule A deductions and Schedule C business income and expenses, checking the wrong filing status boxes, and claiming credits her customers are not entitled to claim. Saiz admitted to an IRS examiner that she engages in this practice “to increase my taxpayer’s refund in order to keep them happy and have them send me new clients.”

19. To date, the IRS has examined 612 returns prepared by Saiz for customers in the tax years 2010 through 2012. Refunds were claimed on 98% of the returns Saiz prepared for 2010 and 99% of the returns she prepared for 2011 and 2012. The examinations revealed deficiencies in the reported tax on 600 (or 98%) of the 612 returns examined, with an average deficiency of \$5,592. Since 2010, she has prepared at least 6,737 tax returns, including 4,675 prepared at Primo. Based on the number of returns prepared at Primo, the IRS estimates the revenue loss to the Government from Primo’s practices could exceed \$25 million. The following are examples of schemes employed at Primo.

20. Saiz prepared a 2011 tax return for “C.S.” at Primo that included numerous fraudulent items. Although CS did not operate a business, Saiz prepared and filed with her return a Schedule C – “Profit or Loss From Business” – that reported non-existent gross receipts of \$6,599 and deducted fictitious business expenses of \$1,465. By claiming fictitious business income for C.S., Primo was able to fraudulently increase the Earned Income Tax Credit that C.S. received. Because this is a refundable credit, it increased the amount of C.S.’s refund. Primo also claimed a fuel tax credit of \$722, an American Opportunity credit of \$956, and inflated child tax credits, even though C.S. was not entitled to those credits. The copy of the tax return that C.S. received from Primo did not include the phony Schedule C, Form 8863 (additional child tax credit), or Form 4136 (fuel tax credit).

21. Saiz prepared a 2011 tax return for “M.A. and “A.D.” at Primo that included numerous fabricated items. The following table summarizes deductions for expenses the taxpayers neither paid nor incurred, and credits the taxpayers were not entitled to claim, that Saiz knowingly claimed on their return:

| Item | Amount |
|----------------------------------|---------------|
| Employee Business Expenses | \$24,749 |
| Charitable Contributions | \$3,520 |
| Insurance Premium Expenses | \$2,566 |
| Non-refundable Education Credits | \$2,671 |
| Refundable Education Credits | \$1,876 |
| Fuel Tax Credits | \$644 |

Saiz attended these taxpayers’ meeting with the IRS examiner who audited their returns, as their power of attorney, and admitted to the examiner that she included these amounts to increase the taxpayers’ refund. Indeed, Saiz told the revenue agent that the \$24,749 in employee business expenses was a “random” amount she selected. She further stated that she included

these items “to increase my taxpayer’s refund in order to keep them happy and have them send me new clients.”

22. Primo also prepared a 2011 tax return for “F.C. and G.C.” That return claimed \$27,438 in Schedule A itemized deductions for taxes, charitable gifts, and unreimbursed employee expenses that the taxpayers were not entitled to claim. In addition, Saiz misrepresented that she works for the IRS as a representative and is paid by the government for filing tax returns. The taxpayers’ refund check was deposited directly into Primo Tax Service’s bank account and remitted to the taxpayers, net of Primo’s \$845 fee.

23. On April 30, 2014, this Court entered a preliminary injunction barring Saiz from preparing or assisting in the preparation of federal tax returns for anyone other than herself, as well as enjoining her from engaging in other activities related to tax return preparation. *See Order Granting Joint Motion to Stay Proceedings and Stipulated Order for Preliminary Injunction, United States v. Maggie Saiz*, No. 1:14-cv-20390-JEM (S.D. Fla. April 30, 2014).

Harm Caused by Joseph and His Businesses

24. Joseph’s customers at Ebenezer and Primo’s have been harmed by his actions because they paid fees to prepare proper tax returns, but Joseph and those businesses have prepared returns that substantially understated their customers’ correct tax liabilities or created or inflated improper refunds. Many customers now face large income tax deficiencies and may be liable for sizable penalties and interest.

25. Joseph’s and his businesses’ conduct harms the United States because their customers are claiming refunds to which they are not entitled. As described above, the IRS has examined 76 returns prepared by Ebenezer, and determined that 74 contained deficiencies, with an average deficiency of \$4,687.62 (in addition to the deficiencies in returns prepared by Primo).

Multiplying this average deficiency to the number of returns Joseph directly or indirectly prepared results in millions of dollars in tax revenue lost to the United States for returns he or his businesses prepared for the tax years 2011 and 2012, alone.

26. In addition to the direct harm caused by preparing tax returns that understate their customers' tax liabilities and/or overstate their refunds, Joseph's and his businesses' activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

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

Count I: Injunction under 26 U.S.C. § 7407

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

29. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from, inter alia, (1) 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 (as defined by section 6694(a)(2)) which the return preparer knew or should have known was unreasonable; or (2) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

30. 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 26 U.S.C. §§ 6694 and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

31. Joseph and his businesses have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing federal income tax returns that understate customers' liabilities or overstate refunds based on unrealistic, frivolous, and reckless positions that they knew, or should have known, were unreasonable and reckless.

32. Joseph's and his businesses' continual and repeated violations of § 6694 fall within 26 U.S.C. § 7407(b)(1)(A) and (D). As explained above, they prepare returns that contain understatements of tax liability and overstatements of refunds based on items reported on customers' tax returns that Joseph and his businesses know are false. Thus, Joseph's and his businesses' conduct is subject to an injunction under § 7407.

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. If they are not enjoined, Joseph and his businesses are 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 Joseph and his customers, and exposing his customers to large liabilities that include penalties and interest.

35. Joseph's and his businesses' continual and repeated conduct in violation of section 6694, including his audacious and repeated bogus claims of expenses and deductions, including fictitious business income and expenses, 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, he, and his businesses, should be permanently barred from acting as a tax return preparer under 26 U.S.C. § 7407.

Count II: Injunction under 26 U.S.C. § 7408

36. The United States incorporates by reference the allegations in paragraphs 1 – 27 above.

37. 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 if injunctive relief is appropriate to prevent recurrence of such conduct.

38. Section 6701 of the Internal Revenue Code penalizes any person who aids or assists the preparation or presentation of any portion of a federal tax return when the person knows or has reason to believe that such portion will be used in connection with a material matter arising under the internal revenue laws and knows that if it is so used it will result in an understatement of another person's tax liability.

39. Joseph and his businesses prepare federal tax returns for customers that they know will understate their correct tax liabilities, because Joseph knowingly prepares returns and reviews returns prepared by others in his employee claiming improper expenses and deductions. Joseph's conduct is thus subject to a penalty under § 6701.

40. If the Court does not enjoin Joseph and his businesses, they are likely to continue to engage in conduct subject to penalty under § 6701. Their preparation of returns claiming improper expenses and deductions is widespread over many customers and tax years. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

Count III: Injunction under 26 U.S.C. § 7402(a)

41. The United States hereby incorporates by reference the allegations in paragraphs 1 – 27 above.

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

43. Joseph and his businesses, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

44. Unless enjoined, Joseph and his businesses are likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If they are 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 Joseph's and his businesses' customers to detect future returns understating the customers' liability or overstating their refund.

45. While the United States will suffer irreparable injury if Joseph and his businesses are not enjoined, they will not be harmed by being compelled to obey the law.

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

47. 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 Joseph, Primo Tax Services, Inc., and Ebenezer Tax Services, Inc. have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 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 26 U.S.C. § 7407 to bar them from acting as federal tax return preparers to prevent recurrence of that conduct;

B. That the Court find that Joseph, Primo Tax Services, Inc., and Ebenezer Tax Services, Inc. have 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 Joseph, Primo Tax Services, Inc., and Ebenezer Tax Services, Inc. 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 26 U.S.C. § 7402(a);

D. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Joseph, Primo Tax Services, Inc., and Ebenezer Tax Services, Inc., 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 preparing or filing federal tax returns, amended returns, or other related documents or forms that understate federal tax

liability or overstate federal tax refunds based on positions that they know or reasonably should know are unreasonable;

(3) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6701, 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.

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring that Joseph, 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, Primo Tax Services, Inc., and Ebenezer Tax Services, Inc. prepared a federal tax return since January 1, 2009, to inform them of the permanent injunction entered against Joseph and his businesses, 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;

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Joseph 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, Primo Tax Services, Inc., and Ebenezer Tax Services, Inc. prepared federal tax returns or claims for refund since January 1, 2011;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Joseph to produce to counsel for the United States within 30 days copies of

all federal income tax returns that Joseph, Primo Tax Services, Inc., and Ebenezer Tax Services, Inc. have prepared since January 1, 2011;

H. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Joseph to provide a copy of the Court's order to all of his, Primo Tax Services, Inc.'s, and Ebenezer Tax Services, Inc.'s, principals, officers, managers, employees, and independent contractors 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;

I. That the Court order, without further proceedings, the immediate revocation of any Preparer Tax Identification Number (PTIN) that is held by, or assigned to, or used by Joseph, Primo Tax Services, Inc., or Ebenezer Tax Services, Inc., pursuant to 26 U.S.C. Section 6109;

J. That the Court order the immediate revocation of any Electronic Filing Identification Number (EFIN) held by, assigned to, or used by any of the Defendants.

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

L. That the Court retain jurisdiction over Defendants and over this action to enforce any permanent injunction entered against them; and

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

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/s/ Michael W. May
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