

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 4 : 14 cv 134 - DMB - JMV
)	
v.)	
)	
NATHANIAL KIMBLE, individually)	
and doing business as)	
KIMBLE TAX SERVICES,)	
)	
Defendants.)	
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COMPLAINT

The United States of America alleges as follows:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a), 7407, and 7408 to enjoin Nathaniel Kimble, his business “Kimble Tax Services,” and any other person working in concert with him, 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 conduct subject to penalty under 26 U.S.C. § 6694 by preparing or assisting in the preparation of federal tax returns that he knows (or reasonably should know) will result in the understatement of any federal tax liability or the overstatement of a federal tax refund;
 - c. Engaging in conduct subject to penalty under 26 U.S.C. § 6695(g) by failing to comply with due diligence regulations;
 - d. Engaging in conduct subject to penalty under 26 U.S.C. § 6701 by aiding or assisting in the preparation of any portion of a tax return while knowing or having reason to believe that such portion will be used in connection with any material matter arising under the internal revenue laws and (if so used) would result in an understatement of tax liability; or

- e. Engaging in any other conduct which substantially interferes with the proper administration and enforcement of the internal revenue 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.

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. Venue is also proper under 28 U.S.C. §1391(b)(1) because defendant resides in this district

Summary of Defendant's Activities

5. Kimble resides at 116 Preston Street, Benoit, Mississippi.

6. Kimble prepares income tax returns, including Form 1040, "Individual Income Tax Return," for other taxpayers from an office location at 326 Martin Luther King Jr. Boulevard, Greenville, Mississippi.

7. Since at least 2010, Kimble has prepared tax returns under the name "Kimble Tax Services." Kimble has a Preparer Tax Identification Number (PTIN) issued by the IRS. He charges \$225 to prepare an individual income tax return (Form 1040) and an additional \$75 for a Form 1040 that includes a Schedule C, Profit or Loss from Business. Kimble told IRS agents that he does not charge a fee for returns that do not result in a refund.

8. Kimble has no formal training as a tax return preparer. He learned income tax preparation by working with Alice Mobley. In 2011, Mobley pled guilty to one count of conspiring to defraud the United States, one count of assisting in the filing of false tax returns, one count of wire fraud, and one count of Aggravated Identity Theft in connection with the filing of false tax returns through her businesses. *United States v. Mobley*, Case No. 1:10-cr-243-WS-C (S.D. Ala., Mobile Division). On March 30, 2012, Mobley was sentenced to 75 months imprisonment and three years of supervised release.

9. In documents filed in the criminal proceeding, Mobley admitted that she had an ownership interest in Kimble Tax Services and that she knowingly conspired and agreed with individuals who worked there (and others) to knowingly file fraudulent tax returns.

10. IRS records show that 2,377 returns were prepared by or at the direction of Kimble from 2010 through 2014. The number of returns prepared in each calendar year was as follows:

<u>Year</u>	<u>Number of Returns</u>
2010	648
2011	608
2012	374
2013	374
2014	373

Abuse of the Earned Income Tax Credit

11. Of the 2,377 returns identified in paragraph 10, above, 2,352 (98.9%) claimed a refund, and 2,159 (90.8%) claimed an Earned Income Tax Credit (“EITC”). These percentages far exceed the national averages and suggest a pattern of abuse by Kimble.

12. 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.

13. Kimble has repeatedly and continually claimed improper EITCs on his customers' returns to generate large and erroneous refunds. His primary schemes are to overstate the number of qualifying children of the taxpayer and to report fictitious income to fabricate or increase the EITC claimed on his customers' returns.

14. The 2011 personal income tax return that Kimble prepared for taxpayer M.M. of Greenville, Mississippi, demonstrates one of Kimble's techniques for claiming a false or inflated EITC on behalf of his customers. That return included a claim for an EITC in the amount of \$5,723, based on \$16,805 in wages, her filing status as head of household and three qualifying children – reportedly her niece, son, and grandchild. However, the documents retained by Kimble for this taxpayer showed that at least one of the children did not reside with M.M. According to the W-2 issued by her employer, a client information form, and a lease agreement in Kimble's customer file, M.M. resided on Wanda Drive in Greenville, while the school records retained for one of the children showed that she resided on North Broadway Street. The North Broadway Street address was falsely reported as M.M.'s address on the return prepared by Kimble. Because at least one of the children reported as a qualifying child did not actually reside with M.M., she was not legally allowed an EITC in the amount claimed on the return prepared by Kimble.

15. The amount of the EITC that a taxpayer may claim increases in proportion to a taxpayer's wages or other earned income up to a certain dollar amount. As such, there is a "plateau" of earned income that will result in the maximum possible EITC a taxpayer may claim. Because that "plateau" amount may be more than the income the taxpayer actually earned, a

return falsely overstating income will, in certain circumstances, generate a larger refund. For that reason, a “Schedule C, Profit or Loss from Business” is often used by unscrupulous tax return preparers to report fictitious income for purposes of fraudulently claiming the EITC.

16. Of the 649 returns Kimble prepared from 2010 through 2012 that included a Schedule C, 627 (96.6%) included a claim for an EITC.

17. The 2011 personal income tax return that Kimble prepared for taxpayer R.A. of Greenville, Mississippi, demonstrates one of Kimble’s techniques for wrongfully claiming an EITC by falsely reporting income on a Schedule C. That return stated that R.A. was a self-employed hair dresser, and reported net business income on a Schedule C of \$14,640, no wage income, and a deduction of \$1,034 for the deductible portion of self-employment tax, resulting in an adjusted gross income of \$13,606. The taxpayer’s filing status was “Head of Household,” and she claimed two qualifying children. Under the applicable EITC table for 2011, her adjusted gross income of \$13,606 resulted in the highest possible EITC (\$5,112) given her status and number of qualifying children. R.A.’s customer file did not include any receipts, account statements, or any other business records evidencing any of the purported business income or expenses, or any other evidence that R.A. had actually conducted any business activity. Based on the information retained by Kimble, this claim appears entirely fraudulent.

Failure to comply with EITC due diligence monitoring and penalties

18. In addition to preparing returns that knowingly understate customers’ tax liabilities or overstate refunds by claiming credits to which his customers are not entitled, Kimble has continually and repeatedly failed to comply with the due diligence requirements set forth in 26 U.S.C. § 6695(g), and accompanying regulations, to determine his customers’ eligibility to claim EITCs or the amount they are entitled to claim. The due diligence a preparer

must undertake includes, *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).

19. On January 17, 2012, the IRS conducted an investigation of Kimble for returns he prepared during the 2011 filing season (for the 2010 tax year) to determine whether the due diligence requirements were being met as to the eligibility of taxpayers claiming the EITC and whether the amount of EITC claimed was correct. The IRS reviewed 275 returns and customer files and determined that Kimble failed to meet the due diligence requirements for 254 taxpayers. Specifically, the IRS determined that Kimble failed to sufficiently document the questions he asked his customers, or the responses they provided regarding their eligibility to claim the EITC.

20. On June 4, 2012, a delegate of the Secretary of Treasury assessed penalties in the amount of \$25,400 against Kimble under 26 U.S.C. § 6695(g) for his failure to retain information in his customer files to document his compliance with the EITC due diligence requirements of Treas. Reg. § 1.6695–2(b)(3), (4). Kimble did not agree to the imposition of penalties against him, and as of July 22, 2014, owed \$23,527.17 on account of the penalty assessment.

21. On May 15, 2013, an IRS Revenue Agent sent Kimble a letter to arrange a meeting to discuss whether Kimball had modified his EITC due diligence practices. Toward that end, the letter identified 20 taxpayers for whom Kimble had prepared returns during 2012 (for the 2011 tax year) and requested their files and copies of the returns Kimble prepared for each.

22. After Kimble received the letter requesting 20 customer files, he attempted to contact the taxpayers identified and verify or correct the information reported on the returns. As

a result of that *ex post* attempt to conduct due diligence, seven of the 20 customer files provided by Kimble contained an amended income tax return (Form 1040X) that had been prepared after the returns and files were requested by the IRS. Five of these seven returns reduced the number of qualifying children claimed for EITC purposes, thereby reducing the total amount of EITC claimed.

23. On June 21, 2013, an IRS Revenue Agent interviewed Kimble to investigate his ongoing tax return preparation and review deficiencies in the customer files he provided.

24. Based on the interview and the customer files Kimble provided, the Revenue Agent determined that Kimble remains non-compliant with the EITC due diligence requirements. For example, 5 of the 20 requested returns included an EITC claim based on a permanently and totally disabled dependent, which increases the total amount of the EITC available. Only one file included documentation evidencing the disability of the dependent.

Harm to the United States

25. Kimble's tax return preparation activities have resulted in the loss of significant tax revenue through tax understatements and claims for refundable credits his customers are not eligible to take.

26. In addition, Kimble's tax return preparation activities have forced the United States to expend significant resources to examine and correct the returns he prepares.

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

28. Because returns prepared by Kimble wrongfully claim EITC credits, which are refundable, the returns prepared by Kimble 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.

29. To date, the IRS has examined at least 224 returns prepared by Kimble for the tax years 2009 through 2013 to determine whether the EITC was properly claimed. The IRS made adjustments on 210 of those 224 returns, i.e. 94% of the returns, for a total adjustment of \$860,747, or \$3,843 for each return examined. Since 2012, Kimble has prepared approximately 374 returns annually. If Kimble were to continue to prepare that many returns each year, an error rate of 94% would result in a potential loss to the government from Kimble's ongoing return preparation of over \$1 million per year.

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

30. The United States incorporates by reference the allegations in paragraphs 1 through 29.

31. 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; and

(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

32. 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.

33. 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).

34. In this case, an injunction under §7407 barring Kimble from preparing tax returns for others is appropriate because he has engaged in conduct subject to penalty under 26 U.S.C. § 6694 by filing hundreds of returns that wrongfully claim the EITC and conduct subject to penalty under

35. Kimble engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns that inflate a taxpayers' claim to the EITC by reporting false income on a Schedule C or by claiming an inflated EITC based on nonqualifying dependents. Kimble has a legal duty not to "ignore the implications of information furnished to, or known by" him and to make reasonable inquiries if the information furnished to him "appears to be incorrect, inconsistent, or incomplete." *Treas. Reg. § 1.6695-2(b)(3)(i)*. As such, Kimble should know that the false positions he reports in order to wrongfully inflate the EITC are unreasonable.

36. The IRS has disallowed all or part of an EITC claimed on over 210 returns prepared by Kimble. Because of the extensive resources that would be required to investigate

the claims on the hundreds of returns prepared by Kimble each year, it is not feasible to examine every return he prepares. As a result, Kimble has likely prepared far more returns with a false or fraudulent EITC claim than the 210 returns the IRS has been able to examine, especially considering the outrageous percentage of his returns that claim an EITC. In any event, those 210 returns evidence that Kimble repeatedly has engaged in conduct prohibited by 26 U.S.C. §6694.

37. Kimble 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, Kimble 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. This is particularly shown by the fact that Kimble only performed due diligence for the 20 requested customer files, as described in paragraph 19, above, after he was contacted by the IRS regarding the filed returns and that the *ex-post* investigation he conducted resulted in several amended returns. In addition, many of those files contain no documentation or other evidence that shows Kimble questioned (much less resolved) inconsistencies in the information he was purportedly given, such as M.M.'s address on the Form w-2 differing from that of a qualifying child she claimed for EITC purposes.

38. Kimble has continued to engage in the behavior described in this complaint even after being informed in January of 2012 that he would be penalized for failing to meet the due diligence requirements and being assessed a penalty in June of 2012 for that reason.

39. Kimble'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, Kimble is likely to continue preparing false federal income tax returns.

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

41. Only a permanent injunction barring Kimble from preparing returns is sufficient to prevent future harm because the duration and extent of his fraudulent activities demonstrates that monitoring a narrower injunction would be unduly burdensome and Kimble would be likely to circumvent any conduct-specific restrictions by employing new fraudulent schemes. For years, Kimble has improperly claimed the EITC on the majority of the returns he prepared. The fact-intensive nature of the false positions reported on returns prepared by Kimble, such as 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, Kimble has failed to maintain adequate records that will assist the IRS in determining the veracity of the tax returns he prepares. Failure to permanently enjoin Kimble from preparing returns will require the IRS to spend additional resources to investigate the hundreds of returns he prepares each year. In addition, the IRS will also be forced to expended resources to uncover all of Kimble's future schemes. A narrower injunction would not be sufficient to prevent Kimble's further interference with the administration of the federal tax laws Kimble 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

42. The United States incorporates by reference the allegations contained in paragraphs 1 through 29.

43. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in “specified conduct.” 26 U.S.C. § 7401(a). Section 7401(c)(1) defines “specified conduct” to include 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.

44. Kimble 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 he knew that the taxpayer was not entitled to the credit, or the credit in the full amount claimed, as described in paragraphs 7 through 15, above. Injunctive relief is appropriate to prevent recurrence of this conduct.

45. Accordingly, Kimble 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

46. The United States incorporates by reference the allegations contained in paragraphs 1 through 29.

47. 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.

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

49. If Kimble continues to act as a tax return preparer, his conduct will result in irreparable harm to the United States, and the United States has no adequate remedy at law. The harm caused by Kimble’s conduct includes the following:

- a. Kimble'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;
- b. Unless Kimble is enjoined from preparing returns, the IRS will have to devote substantial and unrecoverable time and resources auditing his customers individually to detect false, fraudulent, or overstated refund claims in future returns; and
- c. The detection and audit of erroneous tax credits claimed on returns prepared by Kimble will be a significant burden on IRS resources.

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

A. The Court find that Nathaniel Kimble 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. The Court find that Kimble 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. The Court find that Kimble 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 Kimble is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a);

D. The Court enter a permanent injunction prohibiting Nathaniel Kimble and any other person working in concert with him, 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 conduct subject to penalty under 26 U.S.C. § 6694 by preparing or assisting in the preparation of federal tax returns that he knows (or reasonably should know) will result in the understatement of any federal tax liability or the overstatement of a federal tax refund;
3. Engaging in conduct subject to penalty under 26 U.S.C. § 6695(g) by failing to comply with due diligence regulations;
4. Engaging in conduct subject to penalty under 26 U.S.C. § 6701 by aiding or assisting in the preparation of any portion of a tax return while knowing or having reason to believe that such portion will be used in connection with any material matter arising under the internal revenue laws and (if so used) would result in an understatement of tax liability; or
5. Engaging in any other conduct which substantially interferes with the proper administration and enforcement of the internal revenue laws.

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

1. At his own expense, notify each person for whom he prepared federal income tax returns or any other federal tax forms after January 1, 2010, of this action and provide each person with a copy of the final injunction entered against him, as well as a copy of the Complaint setting forth the allegations as to how Kimble fraudulently prepared federal income tax returns;
2. Turn over to the United States copies of all returns or claims for refund that he prepared after January 1, 2010;
3. 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 he prepared returns after January 1, 2010;
4. File a sworn statement with the Court evidencing his compliance with the foregoing directives within forty-five (45) days of entry of the final injunction in this action; and
5. Keep records of his compliance with the foregoing directives, which may be produced to the Court, if requested, or the United States pursuant to paragraph F, below;

F. The Court authorize the Internal Revenue Service to revoke immediately any Preparer Tax Identification Numbers held by, or assigned to, Kimble pursuant to 26 U.S.C. § 6109 and any Electronic Filing Identification Numbers held by, or assigned to, Kimble pursuant to 26 C.F.R. § 1.6011-7;

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

H. The Court grant the United States such other and further relief as the Court deems appropriate.

Dated: September 10, 2014

Respectfully submitted,

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