

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
MELISSA ALVAREZ,)	
individually and doing business as)	Case No. 7:14-cv-00098
BEST & UNIQUE INCOME TAX)	
SERVICES also known as BEST AND)	
UNIQUE INCOME TAX MELISSA and)	
BEST & UNIQUE INCOME TAX)	
SERVICES, LLC)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, alleges the following:

1. This is a civil action brought by the United States under §§ 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) to permanently enjoin Defendant Melissa Alvarez, individually and doing business as Best & Unique Income Services, Best & Unique Income Tax Melissa and Best & Unique Income Tax Services, LLC and anyone in active concert or participation with her, from:
 - a. acting as a federal tax return preparer, or requesting, assisting in, or directing the preparation or filing of federal tax returns (including amended returns) or other related documents or forms, for any person or entity other than herself;
 - b. engaging in any conduct subject to penalty under I.R.C. §§ 6694, 6695, 6701, or any other penalty provision of the Internal Revenue Code; and

- c. engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.
2. Since 2004, Alvarez has been unlawfully preparing federal income tax returns that understate the tax liabilities of her customers by claiming false, improper, or inflated deductions or tax credits, including the earned income tax credit (EITC) and the first-time homebuyer credit (FTHBC). Alvarez has also engaged in other improper conduct subject to penalty under the Internal Revenue Code, as described below.

Jurisdiction and Venue

3. 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.
4. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and I.R.C. § 7402(a).
5. Venue is proper under 28 U.S.C. § 1391 because Alvarez resides in McAllen, Texas which is within this judicial district.

Alvarez's Tax-Preparation Business

6. Melissa Alvarez prepares federal income tax returns for compensation and has been doing so since 2004. She is a "tax return preparer" under I.R.C. § 7701(a)(36).
7. Since 2004, Alvarez has been doing business in McAllen, Texas, under several business names, including Best & Unique Income Tax Services, Best & Unique Income Tax Melissa and Best & Unique Income Tax Services, LLC.
8. Alvarez is not an attorney or a certified public accountant.

9. Alvarez's only training in taxation and tax preparation consists of a course on updates and changes in tax law sponsored by a tax-preparation firm located in Pharr, Texas, which Alvarez attends prior to the beginning of each tax-filing season.
10. Alvarez does not have her own electronic filing identification number, which the IRS requires in order to file federal income tax returns electronically. Instead, Alvarez provides the returns she prepares for her customers to the tax-preparation firm in Pharr, Texas, which files the returns electronically.
11. Most of Alvarez's customers reside in southern Texas.

Description of Alvarez's Unlawful Tax-Preparation Activity

12. Since Alvarez began preparing federal tax returns in 2004, she has continually and repeatedly understated the tax liabilities of many of her customers.
13. The table below shows the following data from IRS records: the number of federal income tax returns prepared by Alvarez that were filed with the IRS during each year from 2004 through 2012, how many of those returns have been examined by the IRS, and how many of the examined returns were determined by the IRS to have understated the tax liabilities of those customers.

Filing Year	No. of Returns Prepared	No. of Returns Examined by IRS	No. of Examined Returns in which IRS Found Understated Tax Liabilities	Percent of Examined Returns in which IRS Found Understated Tax Liabilities
2004	24	4	4	100%
2005	437	8	8	100%
2006	550	7	7	100%
2007	704	12	11	92%
2008	608	18	17	94%
2009	759	12	12	96%
2010	725	53	51	95%
2011	715	48	47	98%
2012	627	8	8	100%
Total	5,149	170	165	97%

14. Since 2004, Alvarez has continually and repeatedly prepared federal tax returns that she knew, or should have known, contained:
- a. False, improper, or inflated itemized deductions on Schedule A (Itemized Deductions);
 - b. False, improper, or inflated business expense deductions on Schedule C (Profit or Loss from Business (Sole Proprietorship)); and/or
 - c. False, improper, or inflated claims for tax credits, including the earned income tax credit (EITC) and the first-time homebuyer credit (FTHBC).

Claiming Improper Deductions

15. In some instances, Alvarez asks her customers to estimate the amounts of certain personal expenses (such as meals, commuting mileage, insurance, cell phone usage, or utilities) and then lists those expenses as deductions on Schedules A, C, or F, while knowing or having reason to know that the expenses are not deductible.
16. In other instances, Alvarez fabricates deduction amounts listed on her customers' Schedules A, C, or F without documents to substantiate those amounts.

17. Alvarez has also claimed fake expense deductions on Schedules C for customers who did not operate businesses.

Preparing Improper EITC Claims

18. For some of Alvarez's customers, the false deductions artificially decrease the customers' incomes so that they appear to be eligible to claim the EITC or to claim a higher EITC amount. Alvarez wrongfully claims the EITC for those customers on their returns.
19. 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 claimed dependents.
20. Because the EITC is a refundable credit, claiming the credit can reduce a taxpayer's federal income tax liability below zero, entitling the taxpayer to a tax refund.
21. In 1997, Congress authorized the Secretary of the Treasury to impose "due diligence" requirements on tax preparers who claim the EITC for customers. *See* I.R.C. § 6695(g). Under final regulations originally enacted in 2000 and subsequently amended, among other requirements, tax preparers must document the eligibility determination and credit computation for any of their customers claiming the EITC and retain that documentation for three years. *See* 26 C.F.R. (Treas. Reg.) § 1.6695-2.
22. Alvarez has continually and repeatedly failed to comply with the due diligence requirements imposed by Treas. Reg. § 1.6695-2 by, among other things, failing to create or retain accurate EITC documentation.

Preparing Improper FTHBC Claims

23. Alvarez has also prepared returns claiming the FTHBC for customers that she knew, or should have known, did not qualify for the credit.

24. In 2008, a first-time homebuyer could claim a refundable tax credit (the FTHBC) equal to the lesser of ten percent of the home's purchase price or \$7,500 if, among other requirements, the individual purchased a home on or after April 9, 2008 and before January 1, 2009, and had not owned a home in the three years prior to the purchase.
25. Alvarez continually and repeatedly prepared false claims for the FTHBC on IRS Forms 5405, which were attached to her customers' federal income tax returns.
26. In some instances, Alvarez made no attempt to determine whether her customers who claimed the FTHBC were eligible to do so.
27. In other instances, Alvarez claimed the FTHBC for customers that she knew or should have known were ineligible to claim the credit.
28. Alvarez claimed the FTHBC for individuals who had not purchased homes between April 9, 2008 and January 1, 2009, or did not own a home at all. Alvarez also entered incorrect acquisition dates on some of her customers' Forms 5405 in order to obtain tax credits for which they did not qualify.

Failing to Sign Returns or Provide Identification Number

29. As shown in the above table, IRS records indicate that Alvarez prepared 759 tax returns that were filed in 2009 and 725 tax returns that were filed in 2010.
30. However, customer lists that Alvarez provided to the IRS show that she prepared over 70 additional returns for tax years 2009 and 2010.
31. On information and belief, Alvarez did not sign all of those additional returns as a tax return preparer and/or did not provide her identification number on those returns, in violation of I.R.C. §§ 6695(b) and 6695(c).

Examples of Alvarez's Unlawful Tax-Preparation Activity

32. Alvarez prepared the 2010 and 2011 federal income tax returns for "R.A." that included numerous fraudulent items. Although R.A. did not operate a business, Alvarez prepared and filed with his returns a Schedule C – "Profit or Loss From Business" – that on his 2010 return, for example, reported non-existent gross receipts of \$1,250 and deducted fictitious business expenses of \$5,807. Alvarez also claimed education credits and various Schedule A deductions such as medical expenses and mileage, even though R.A. was not entitled to those. When interviewed by an IRS agent, R.A. told the agent that he did not have a Schedule C business and such was placed on his return without his knowledge. He further stated that he and his daughter did not attend school during the years at issue and education credits were placed on his returns without his knowledge. He further asserted that Alvarez placed the Schedule A expenses for medical expenses and mileage on his return without his knowledge. He told the agent that Alvarez did not question him about any of these expenses and that Alvarez did not review the returns with him.
33. The IRS disallowed R.A.'s Schedule C deductions, education credits and the Schedule A deductions. R.A. agreed to the adjustments.
34. Alvarez prepared the 2007 and 2008 federal income tax returns for "R.M." that included numerous fabricated items. The returns included Schedule A expenses that R.M. neither paid for or incurred that Alvarez knowingly claimed on the returns. R.M.'s 2008 return claimed itemized deductions of \$20,606 and FTHBC of \$7,500. However, R.M. told the agent that Alvarez did not ask R.M. any questions about the Schedule A expenses or ask to see any documents. He does not know how Alvarez came up with the expenses claimed on the return. R.M.'s 2008 return also contained a FTHBC claim. When Alvarez asked R.M. if he

wanted the “homebuyer credit” and whether he bought a home recently, he told her that he did. But Alvarez did not ask to see any proof or ask when he purchased the home. The customer purchased the house prior to the eligible period and did not qualify for the credit.

35. The IRS disallowed R.M.’s Schedule A deductions and the FTHBC claim as well as made other adjustments. R.M. agreed to the examination.
36. Alvarez prepared “A.D.’s” 2007 through 2009 returns which included numerous Schedule C and Schedule A deductions that A.D. was not entitled to claim. Although A.D. had a Schedule C mechanic business, he told the agent that he did not provide Alvarez any information for the expenses related to the business and that he was unaware how Alvarez determined the amount of the expenses. A.D.’s returns also included numerous itemized deductions such as sales taxes, interest expense and employee business expenses that A.D. neither paid for or incurred. The IRS disallowed the itemized deductions, as well as the Schedule C deductions. These adjustments reduced the EITC and the child credits. The accuracy related penalty, 26 U.S.C. § 6662, was also assessed against A.D.
37. Further, the IRS disallowed A.D.’s FTHBC claim. Alvarez claimed this credit on A.D.’s return showing that A.D. purchased a house on January 8, 2010. In fact, A.D. had not purchased a house. His wife, who he had been separated from for many years, purchased a house on September 9, 2004. A.D. agreed to the examination.
38. The 2010 and 2011 federal income tax returns of “M.C.” contained the EITC and education credit. These credits were disallowed because M.C.’s children lived with his wife in Mexico and his children did not attend education institutions during 2010 and 2011. Alvarez was aware that M.C. did not qualify for the education credits and that the children were not qualifying children for purposes of the EITC. M.C. agreed to the assessments.

39. Alvarez prepared the 2010 and 2011 returns for R.P. which included fabricated Schedule Cs. R.P. told Alvarez that a relative worked as a mechanic at his house for three weeks and Alvarez told him that he could include this on his tax return as a Schedule C business. R.P.'s 2010 return contained fabricated Schedule C expenses of \$13,663 which decreased his income by \$12,859. Additionally, R.P.'s 2011 return included various itemized deductions in the amount of \$23,964 that R.P. did not incur. R.P. does not know how Alvarez determined the amounts. The IRS disallowed the Schedule A and Schedule C deductions as well as other credits. R.P. agreed to the assessments.
40. Alvarez prepared a fictitious Schedule C for the 2007 through 2009 returns for "J.N" who was a W-2 wage earner. When J.N. questioned Alvarez about the Schedule Cs, Alvarez told J.N. that "something on the side would give him a bigger refund." Alvarez also claimed improper FTHBC for J.N. The IRS disallowed the Schedule C deductions, the FTHBC and other credits. J.N. agreed to the examination.

Claiming Improper Deductions and Credits on Her Own Returns

41. Alvarez prepared and filed individual federal income tax returns for tax years 2008 and 2009, which were both audited by the IRS. Alvarez did not file a return for the 2010 tax year, so the IRS prepared a substitute for return (SFR) for that year. Alvarez has not yet filed her 2011 and 2012 returns.
42. The IRS determined that in 2008, 2009 and 2010 Alvarez underreported her income from her tax preparation business. Additionally, the IRS disallowed deductions claimed on her Schedule C for office expenses, insurance, utilities and legal and professional expenses due to lack of support. The IRS also disallowed the dependent claimed on Alvarez's return and

determined that she did not qualify for head of household status. Due to these adjustments, Alvarez did not qualify for the EITC and child care credits.

43. The IRS imposed accuracy-related penalties under I.R.C. § 6662 against Alvarez for 2008 and 2009 and failure to pay penalties for 2009 and 2010 and failure to file and estimated tax penalties for 2010. Additionally, due to Alvarez's reckless or intentional disregard of the rules and regulations regarding the EITC, the IRS imposed a two-year EITC ban under 26 U.S.C. § 32(k)(1)(B)(ii) and 6001. Under the ban Alvarez could not claim EITC for the following two years.
44. The IRS ultimately assessed over \$115,000 against Alvarez for unpaid taxes and penalties for tax years 2008 through 2010.

Harm Caused by Alvarez's Unlawful Tax-Preparation Activity

45. Many of Alvarez's customers are harmed by her behavior because they pay her to prepare proper tax returns and she does not do so. Because Alvarez understates many of her customers' federal income tax liabilities, those customers now face assessments for tax deficiencies, interest, and penalties.
46. Alvarez's conduct also harms the United States because her customers' understated tax liabilities result in lost tax revenue. Based on its examination of 170 tax returns prepared by Alvarez filed from 2004 through 2012, the IRS calculated that those returns understated the taxes due by \$550,001, or approximately \$3,265 per return. If this average deficiency per return was spread over the universe of returns prepared by Alvarez, the IRS estimates the return preparation resulted in an excess of \$10 million in tax revenue lost for returns prepared for tax years 2004 through 2012.

47. Alvarez's conduct also harms the United States because the IRS must devote its limited resources to identifying and examining the tax returns of Alvarez's customers; ascertaining their correct tax liabilities; collecting any taxes, interest, and penalties they owe; and recovering any tax refunds erroneously issued to them.

Count I
Injunction under I.R.C. § 7407

48. The United States incorporates by reference the allegations in paragraphs 1 through 47.
49. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from, among other things, engaging in conduct subject to penalty under I.R.C. §§ 6694 or 6695, or engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, if the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of such conduct.
50. Additionally, § 7407 provides that if the court finds that a tax return preparer has continually or repeatedly engaged in such conduct, and that an injunction prohibiting only such conduct would not be sufficient to prevent that person's interference with the proper administration of the Internal Revenue Code, then the court may enjoin the person from further acting as a tax return preparer.
51. For returns prepared after May 25, 2007, § 6694 of the Internal Revenue Code imposes a penalty on any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to (a) an unreasonable position of which the preparer knew or reasonably should have known, (b) a willful attempt to understate the liability, or (c) a reckless or intentional disregard of rules or regulations.

52. For returns prepared before May 25, 2007, § 6694 imposes a penalty on any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to (a) an undisclosed or frivolous position, of which the preparer knew or reasonably should have known, and for which there was not a realistic possibility of being sustained on its merits; (b) a willful attempt to understate the liability; or (c) a reckless or intentional disregard of rules or regulations.
53. Section 6695(b) of the Internal Revenue Code imposes a penalty on any tax return preparer who fails to comply with Treasury Regulations requiring the preparer to sign the returns that he or she prepares.
54. Section 6695(c) of the Internal Revenue Code imposes a penalty on any tax return preparer who fails to comply with I.R.C. § 6109(a)(4), which requires tax return preparers to use identifying numbers on returns they prepare, as required by Treasury Regulations.
55. Section 6695(g) of the Internal Revenue Code imposes a penalty on any tax return preparer who fails to comply with due diligence requirements imposed by Treasury Regulations for determining eligibility for, or the amount of, the EITC.
56. Alvarez has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing federal income tax returns that understate her customers' liabilities based on unreasonable, unrealistic, and frivolous positions of which she knew or should have known, as well as her reckless disregard of rules or regulations.
57. Alvarez has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6695(b) and 6695(c) by failing to comply with Treasury Regulations requiring her to sign all tax returns she prepares and provide her identification number on those returns. Alvarez's conduct demonstrates a reckless disregard of these regulations.

58. Alvarez has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695(g) by preparing federal income tax returns that claim the EITC without conducting or documenting the required due diligence procedures. Alvarez's conduct demonstrates a reckless disregard of these regulations.
59. Alvarez has continually and repeatedly engaged in fraudulent or deceptive conduct that substantially interferes with tax law administration by understating her customers' tax liabilities – and her own tax liabilities – through false or inflated deductions or credits.
60. If the Court does not enjoin Alvarez, she is likely to continue engaging in conduct subject to penalty under I.R.C. §§ 6694 and 6695, as well as engaging in other fraudulent or deceptive conduct that substantially interferes with tax law administration. Alvarez's preparation of returns claiming improper deductions and credits has been continuing since 2004 and is widespread over many customers.
61. Injunctive relief is therefore appropriate under I.R.C. § 7407.
62. The continuing and repetitive nature of Alvarez's misconduct demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent her from continuing to interfere with the proper administration of the tax laws. Thus, the Court should permanently enjoin Alvarez from acting as a tax return preparer.

Count II
Injunction under I.R.C. § 7408

63. The United States incorporates by reference the allegations in paragraphs 1 through 62.
64. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under I.R.C. § 6701 (among other provisions) if injunctive relief is appropriate to prevent the recurrence of such conduct.

65. Section 6701 of the Internal Revenue Code imposes a penalty on any person who aids or assists in, procures, or advises with respect to, the preparation or presentation of a federal tax return or refund claim, knowing (or having 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 would result in an understatement of another person's tax liability.
66. Alvarez prepares federal tax returns for her customers that she knows (or has reason to believe) will be filed with the IRS and that she knows will understate the customers' tax liabilities because Alvarez knowingly prepares returns that claim false or inflated deductions or credits. Alvarez's conduct is thus subject to penalty under I.R.C. § 6701.
67. If the Court does not enjoin Alvarez, she is likely to continue to engage in conduct subject to penalty under I.R.C. § 6701. Alvarez's preparation of returns claiming improper deductions and credits has been continuing since 2004 and is widespread over many customers. Moreover, Alvarez's other tax-related misconduct further demonstrates that she is likely to continue preparing false or erroneous tax returns.
68. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III
Injunction under I.R.C. § 7402(a)

69. The United States incorporates by reference the allegations in paragraphs 1 through 68.
70. Section 7402(a) 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.
71. Through the actions described above, Alvarez has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

72. Unless enjoined, Alvarez is likely to continue to engage in such conduct and interfere with the enforcement of the internal revenue laws.
73. If Alvarez is not enjoined from engaging in such conduct, the United States will suffer irreparable injury by mistakenly providing federal income tax refunds to individuals not entitled to receive them, as well as expending time and resources to identify the individuals, determine their proper federal tax liabilities, and recover the erroneous refunds from them, if possible.
74. Enjoining Alvarez from engaging in such conduct is in the public interest because an injunction, backed by the Court's contempt powers, is likely to stop Alvarez's illegal conduct and the harm it causes to his customers and the United States.
75. The Court should thus grant injunctive relief under I.R.C. § 7402(a).

WHEREFORE, the United States of America requests the following:

- A. That the Court find that Melissa Alvarez has continually or repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695 and continually or repeatedly engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws;
- B. That the Court find that injunctive relief under I.R.C. § 7407 is appropriate to prevent the recurrence of such conduct and that a narrower injunction prohibiting only this specific misconduct would not be sufficient to prevent Alvarez's interference with the proper administration of the internal revenue laws;
- C. That the Court find that Melissa Alvarez has engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent the recurrence of such conduct;

- D. That the Court find that Melissa Alvarez has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws and that injunctive relief is necessary and appropriate to prevent the recurrence of such conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);
- E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Melissa Alvarez, and all those in active concert or participation with her, from:
- a. acting as a federal tax return preparer, or assisting in or directing the preparation or filing of federal tax returns (including amended returns) or other related documents or forms for any person or entity other than herself;
 - b. engaging in any conduct subject to penalty under I.R.C. §§ 6694, 6695, 6701, or any other section of the Internal Revenue Code; and
 - c. engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.
- F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an order requiring Melissa Alvarez, within 30 days of receiving the Court's order, to contact by U.S. mail and, if an e-mail address is known, by e-mail, all persons for whom she prepared federal tax returns, amended returns, or claims for refund for tax years 2010 through 2012, and to inform them of the permanent injunction entered against her by sending each of them a copy of the order of permanent injunction;
- G. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an order requiring Melissa Alvarez, within 30 days of receiving the Court's order, to produce to counsel for the United States a list that identifies by name, social security number, address, e-mail

address (if known), telephone number, and tax period, all persons for whom she prepared federal tax returns, amended returns, or claims for refund for tax years 2010 through 2012;

- H. That the Court retain jurisdiction over this action to enforce any permanent injunction entered against Melissa Alvarez;
- I. That the Court order that the United States be entitled to conduct discovery to monitor Alvarez's compliance with the terms of any permanent injunction entered against her; and
- J. That the Court grant the United States such other relief, including costs, as is just and proper.

Respectfully submitted,

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