AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Northern District of California

FILED
Nov 16 2021
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

United States of America
v.
Traci Austin

Defendant(s)

Case No. 4:21-mj-71792-MAG

UNDER SEAL

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 2018 in the county of Alameda in the Northern District of California, the defendant(s) violated:

Code Section	*Offense Description*
26 U.S.C § 7206(2)	Willfully Aiding or Assisting in the Preparation or Presentation of a Materially False Tax Return Maximum Penalties: Three years imprisonment; $100,000 fine; three years supervised release; mandatory $100 special assessment; forfeiture; restitution

This criminal complaint is based on these facts:

See attached affidavit of IRS-CI Special Agent Christine Stegner

❒ Continued on the attached sheet.

/s/ Christine Stegner
Complainant's signature

IRS-CI SA Christine Stegner
Printed name and title

Approved as to form Abraham Fine
AUSA Abraham Fine

Sworn to before me by telephone.

Date: November 15, 2021

Kandis Westmore
Judge's signature

City and state: Oakland, California

Hon. Kandis A. Westmore, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Christine Stegner, Special Agent, Internal Revenue Service – Criminal Investigation (IRSCI), being duly sworn, hereby state:

INTRODUCTION AND AGENT BACKGROUND

1. I submit this affidavit in support of a criminal complaint charging TRACI AUSTIN ("AUSTIN") with the crime of aiding and assisting in the preparation of false and fraudulent federal income tax returns, specifically Client C.B.'s tax year 2018 income tax return, in violation of 26 U.S.C. § 7206(2). AUSTIN, through her tax return preparation business, Emeryville Tax Services ("ETS"), prepared materially false and fraudulent U.S. Individual Income Tax Returns ("Forms 1040") for her clients. The Forms 1040 were materially false and fraudulent by including false and/or inflated Schedule A expenses, false and/or inflated Schedule C income and expenses, and false dependents. By doing this, AUSTIN fraudulently reduced her clients' taxable income and tax liability, thereby resulting in larger refunds for the client and higher return preparation fee income for AUSTIN. In total, this investigation revealed AUSTIN filed fraudulent Forms 1040 during 2016 through 2019 reducing the tax liability for ETS' clients and caused a tax loss of at least $183,303 to the federal government. In addition, audits performed on tax years 2012 through 2018 by Internal Revenue Service of Forms 1040 prepared by AUSTIN resulted in a total tax loss of approximately $697,153 to the federal government.

2. I am employed as a Special Agent (SA) of the United States Department of the Treasury, Internal Revenue Service – Criminal Investigation assigned to the Oakland field office and have been so employed since October 2018. I successfully completed the Criminal Investigator Training Program and Special Agent Basic Training at the Federal Law Enforcement Training Center located in Glynco, Georgia. As an Internal Revenue Service (IRS)

Special Agent, I am authorized to investigate criminal violations of the Internal Revenue Code (Title 26, United States Code), Money Laundering Statutes (Title 18, United States Code), Bank Secrecy Statutes (Title 31, United States Code), and other related offenses.

3. Prior to my current position as a Special Agent, I was employed as an IRS revenue agent from 2009 – 2018. As a Revenue Agent, I conducted examinations of entities including individual, sole proprietorships, small corporations and partnerships which involved a number of different tasks and procedures. I received training in federal tax law and auditing techniques and practices to examine various tax returns, determine the correct tax liability, identify situations with potential for understated taxes, and to recognize potential fraud. In 2009, I obtained a Bachelor's of Science degree in Business Administration with a concentration in Accounting from Sonoma State University located in Rohnert Park, CA.

4. The facts set forth in this Affidavit are based on my personal knowledge; knowledge obtained from other individuals during my participation in this investigation, including federal law enforcement agents; interviews of witnesses; examination of documents, records and communications; review of information contained within government databases; and information gained through my training and experience.

5. This affidavit does not include each and every fact known to the government, but only those facts necessary to support a finding of probable cause to support the requested warrant.

RELEVANT STATUTES

6. **Title 26, United States Code, Section 7206(2)** reads in pertinent part: Whoever willfully aids or assists in, or procures, counsels or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit,

claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document shall be fined under this title or imprisoned not more than 3 years, or both.

FACTS SUPORTING PROBABLE CAUSE

A. Background on AUSTIN and ETS

7. AUSTIN is the owner of ETS, which was registered with the State of California as a limited liability company on or about August 19, 2013. From at least 2016-2019, AUSTIN was a registered tax return preparer with the California Tax Education Council ("CTEC") during the years under investigation.

8. During the 2015 through 2018 tax years (which tax returns were filed with the IRS in 2016-2019), ETS filed a total of approximately 3,241 returns on behalf of its clients. Of those returns, AUSTIN was shown as the preparer on approximately 1,967 returns. In tax years 2015, 2016, 2017 and 2018, 92%, 95%, 95% and 93% of the returns AUSTIN prepared resulted in refunds. The other 1,274 returns ETS filed during that time period were prepared by ETS employees working under the direct supervision of AUSTIN.

9. Throughout our investigation, my colleagues and I have interviewed approximately 20 clients on whose behalf AUSTIN personally prepared or aided in the preparation of 42 tax returns between 2016 and 2019. For returns AUSTIN personally prepared, each of those clients named AUSTIN as the preparer of those returns and/or identified her as the tax preparer based on her driver's license photograph. My colleagues and I also interviewed several former employees of AUSTIN's at ETS.

10. Our investigation has revealed that AUSTIN willfully aided and assisted in the preparation of at least 42 false Forms 1040 for ETS clients that were submitted to the IRS. AUSTIN benefitted from these fraudulent returns because they resulted in larger refunds for her clients, which in turn resulted in higher fees for AUSTIN.

11. On 23 of the 42 fraudulent Forms 1040 submitted to the IRS, AUSTIN claimed false and/or inflated Schedule A expenses without her clients' knowledge. On 25 of the 42 false Forms 1040 submitted to the IRS, AUSTIN claimed false and/or inflated Schedule C income and expenses without her clients' knowledge. In addition, AUSTIN included false dependents on 10 of the 42 false Forms 1040. The tax loss per Form 1040 ranged from $553.00 to $9,649.00 and in total, the tax loss from the specific clients interviewed amounted to $183,303.00.

B. <u>The Fraudulent Form 1040 Prepared by AUSTIN Charged in this Complaint</u>

Client C.B. – 2018

12. AUSTIN performed Form 1040 tax preparation services for Client C.B. for tax year 2018. AUSTIN is listed as the return preparer on Client C.B.'s Form 1040 for 2018.

13. Client C.B. was an employee during 2018 and received a Form W-2 from his employer. Client C.B. also had a security business that he worked during the weekends for about a year but could not recall in what year the business was open.

14. Client C.B. provided his Form W-2, social security card and ID to AUSTIN when preparing his tax returns. AUSTIN did not review the tax return with Client C.B. prior to submitting the tax return to the IRS; they only reviewed the refund amount. Client C.B. did not receive a copy of the tax return unless asked and, even then, Client C.B. would only get a few pages of the tax return.

15. Client C.B.'s 2018 Form 1040 was fraudulently prepared by AUSTIN by claiming the following materially false items:

a. 2018: False dependent niece; False business loss ($16,958)

16. The above false material items included on Client C.B.'s Form 1040 for 2018 resulted in a tax loss to the federal government of approximately $2,382.

17. Related to the business loss claimed in 2018, Client C.B. did not provide any records related to income and expenses to AUSTIN for Client C.B.'s business and AUSTIN never asked for information related to the business. Client C.B. stated that the business never incurred a loss because they did not have much work and was only in operations for about a year.

18. Related to the false dependent claimed in 2018, Client C.B. did not know there was a dependent niece claimed on the return and confirmed that the niece dependent reported was not Client C.B.'s dependent. The dependent's information may have been provided to AUSTIN for some work the dependent did with Client C.B.'s business, but that the information given to AUSTIN was not for purposes of claiming a dependent

C. <u>Additional Examples of Fraudulent Forms 1040 Prepared by AUSTIN</u>

19. The information below details additional fraudulent tax returns AUSTIN submitted, the materially false items that were included by AUSTIN on those respective returns and the resulting tax loss to the government based on AUSTIN's actions.

Client A.H. – 2015, 2016

20. AUSTIN performed Form 1040 tax preparation services for Client A.H. for tax years 2015 and 2016 (which returns were filed in 2016 and 2017). The return preparer listed on Client A.H.'s 2017 Form 1040 was another preparer at ETS; although Client A.H. stated that AUSTIN prepared his Forms 1040 for all years.

21. Client A.H. was an employee at multiple companies during 2015 and 2016 and received a Form W-2 from each company. Client A.H. provided a Form W-2 to AUSTIN or an ETS receptionist for each of those years. As part of her process, AUSTIN did not review the completed tax return with Client A.H.; they only reviewed the refund amount.

22. AUSTIN fraudulently prepared Client A.H.'s Forms 1040 by claiming the following materially false items:

a. 2015: False dependent nephew; false employee expenses ($18,869)

b. 2016: False dependent nephew; false employee expenses ($18,267)

23. The above false material items included by AUSTIN on Client A.H.'s Forms 1040 for 2015 and 2016 resulted in a tax loss to the federal government of approximately $5,035 and $4,796, respectively.

24. The dependent claimed on Client A.H.'s 2015 return did not meet the relationship test in qualifying as a dependent. The dependent was a cousin of Client A.H., which does not qualify as a dependent. AUSTIN knew of the relationship between Client A.H. and the dependent claimed and reported the dependent as a nephew rather than a cousin to allow the dependent to qualify.

25. As for the tax year 2016 return, Client A.H. did not know the dependent claimed on the 2016 return, did not give AUSTIN that dependent name and did not know that dependent was reported on the tax return.

26. Related to the unreimbursed employee expenses claimed in 2015 and 2016, Client A.H. stated that he did not incur any employee expenses, did not give any numbers to AUSTIN related to job expenses and AUSTIN did not ask any questions related to employee expenses.

Client C.B. – 2016, 2017 [1]

27. AUSTIN performed Form 1040 tax preparation services for Client C.B. for tax years 2016 and 2017. AUSTIN is listed as the return preparer on Client C.B.'s Forms 1040 for 2016 and 2017.

28. Client C.B. was an employee during 2016 and 2017 and received Form W-2 from his employer. Client C.B. also had a security business that he worked during the weekends for about a year but could not recall in what year the business was open.

29. Client C.B. provided his Form W-2, social security card and ID to AUSTIN when preparing his tax returns. AUSTIN did not review the tax returns with Client C.B. prior to submitting the tax returns to the IRS; they only reviewed the refund amount. Client C.B. did not receive a copy of the tax return unless asked and, even then, Client C.B. would only get a few pages of the tax return.

30. Client C.B.'s Forms 1040 were fraudulently prepared by AUSTIN by claiming the following materially false items:

a. 2016: False employee expenses ($6,472); False business loss ($31,008)

b. 2017: False employee expenses ($9,567); False business loss ($25,389)

31. The above false material items included on Client C.B.'s Form 1040 for 2016 and 2017 resulted in a tax loss to the federal government of approximately $4,441 and $1,138, respectively.

32. Related to the unreimbursed employee expenses claimed in 2016 and 2017, Client C.B. stated no unreimbursed expenses were incurred from employment, no information was

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[1] Client C.B.'s 2018 Form 1040 is the fraudulent return specifically charged in this Complaint, and is described in Section B. above.

provided to AUSTIN related to employee expenses and AUSTIN never talked about these items being reported on Client C.B.'s tax returns.

33. Related to the business loss claimed in 2016 and 2017, Client C.B. did not provide any records related to income and expenses to AUSTIN for Client C.B.'s business and AUSTIN never asked for information related to the business. Client C.B. stated that the business never incurred a loss because they did not have much work and was only in operations for about a year.

Client D.M. – 2015, 2016

34. AUSTIN performed Form 1040 tax preparation services for Client D.M. for tax years 2015 and 2016. AUSTIN is listed as the return preparer on Client D.M.'s Forms 1040 for all years.

35. Client D.M. was an employee in all years and received Form W-2 from his employer. Client D.M. also had small side jobs as an electrician, but the amount received related to this side business was no more than $1,000 per year and he may have had $500 of tools purchased per year for those side jobs.

36. Client D.M. provided AUSTIN transcripts he received from the IRS showing the Forms W-2 and other information returns filed under the SSN of Client D.M. Client D.M. also provided tool receipts to AUSTIN that totaled at most $500 per year. AUSTIN did not review the tax returns with Client D.M. Rather, AUSTIN folded up the front page of the tax returns and had Client D.M. sign the signature page.

37. Client D.M. Forms 1040 for 2015 and 2016 were fraudulently prepared by AUSTIN by claiming the following materially false items:

a. 2015: False dependent; False business loss ($18,798)

b. 2016: False dependent; False employee expenses ($12,904)

38. The above false material items included on Client D.M.'s Form 1040 for 2015 and 2016 resulted in a tax loss to the federal government of approximately $4,278, and $2,678, respectively.

39. Related to the unreimbursed employee expenses claimed in 2016, Client D.M. stated the expenses were false and should be zero as no unreimbursed expenses were incurred and no records were provided to AUSTIN for unreimbursed employee expenses.

40. Related to the business loss claimed in 2015, Client D.M. stated there was no loss in any years on the side jobs performed, that he had a minimal income and expense related to the side jobs performed and no documents were provided to AUSTIN regarding any of the expenses she claimed for Client D.M.'s business.

41. Related to the false dependent claimed in 2015 and 2016, Client D.M. did not know the name of the dependent claimed in 2015 or 2016 and Client D.M. stated that the dependents claimed on the returns were false and should not be included on the returns.

D. AUSTIN's "Tax School"

42. Since at least 2016, AUSTIN has hosted a tax school through ETS and charged a fee of at least $200 to attend the tax school. The goal of the tax school was to hire the attendees as preparers for ETS and prepare tax returns for ETS Clients as well as the attendees' own clients. The duration of the tax school varied from year to year, but in 2019, the school was two days during which time the attendees obtained their Personal Tax Identification Number, received training on due diligence and basic tax laws and AUSTIN trained on Schedule C preparation, documentation necessary for filing tax returns, and the marketing strategies of the return preparation business. The flyers for the class held in 2019 boasted that the tax preparers could make up to $90,000.00 per tax season.

43. During the tax school, AUSTIN explained, among other things, how to get ETS clients' income in a specific range to maximize their refunds. AUSTIN would do this by adding numbers to the clients' tax returns depending on their financial situation. At the tax school, AUSTIN explained the two different types of clients that would come into the office for tax preparation. AUSTIN referred to "baby mamas" as clients who had kids but had little to no income. These clients would receive a false Schedule C small business that showed net income in order to get their income into a range that would maximize the earned income credit allowed. The other type of client was a wage earner whose tax return may result in taxes owed. These clients would receive a false Schedule C small business that showed net loss in order to reduce the clients' income and receive a higher refund or a refund instead of owing tax by receiving back their withholdings from their wages earned. By adding items to the clients' tax returns, the client would receive a higher refund, and, in turn, the tax preparation fees would be much higher than a normal tax preparation business.

44. Generally, the clients had no knowledge of the changes that were made to their tax returns, most of the clients would not receive a full copy of their tax return and no review of the returns would be conducted other than the amount of the expected refund. AUSTIN instructed the return preparers working for ETS not to print out the tax returns for their clients. In addition, one client that was interviewed was told by AUSTIN that they do not give out tax returns to their clients.

45. During the tax school session that took place on November 23, 2019, AUSTIN discussed that both spouses cannot use the filing status of head of household if they live at the same address. AUSTIN explained a trick that will allow both spouses to incorrectly claim head of household filing status by falsifying the client's address on their tax return. AUSTIN stated *"I*

am always trying to get my clients a bigger refund, so there may be a house in the back, so we might use 1511 Derby Street A, 1511 Derby Street, B. That's what I do. Always find loopholes."

46. During a second session of the tax school that took place on December 10, 2019, AUSTIN made several statements regarding tax preparation that showed she manipulates tax return information to obtain inflated refunds or lowered tax liabilities for her clients. These statements demonstrate AUSTIN's willfulness regarding submission of the fraudulent returns.

- When discussing the preparation of the Schedule C, AUSTIN stated, "So, you don't have to put a Schedule C on everything. If they don't you can, they probably gonna be able to get a good refund. That's how you make the money is the Schedule C."

- AUSTIN explained what she called 'the formula' which was a client's income needed to be between $11,000.00 - $12,000.00 to get the maximum earned income tax credit for a client with one child. An attendee of the tax school commented about the formula when the study group was preparing the practice return by stating, *"The numbers she gave you are not high enough, she needs to get to $10… so you are not going to probe anymore, you are just going to do your own calculations so that she can get the $10,000.00."* AUSTIN interrupted the attendee and stated, *"or probe and get the right number, those are the two options."*

- At one point in the study group, an attendee posed a question to AUSTIN, "people that I know that have a business, but they don't have a child, should I even be advertising to them?" AUSTIN replied, *these aren't our baby mamas with no kids, cus our baby mamas with no kids they don't even have to file cus they are not getting money back, but a person with a real business, like a limousine business, yeah they just don't want to owe so you can zero them out. Like do enough expenses so they don't owe… And then we charge them and so there is no money taken out cus there is no refund, so they have to pay me cash. For a small business return, a small business return should always start off at $500.00."* An attendee clarified *"even if you are just trying to zero them out?"* To which AUSTIN stated *"um-hmm. I just had somebody I zeroed out. When I started it, I didn't do any deductions, he owed $13,000.00. So when I put in, and it might seem easy to us, but remember your client knows nothing about taxes, you know, so don't make it seem easy, you know. So, he had to pay me and I zeroed him out and he paid me $500.00. That's better paying me $500.00 than him paying the IRS $13,000.00."*

47. Lastly, during the study group, AUSTIN also described one occasion when an ETS client was upset because the tax preparer put down that she was a pet groomer and the IRS

wanted verification of the client's business activity. So, AUSTIN told her client *"to print out some photos of some dogs and I did a profit and loss for her."* AUSTIN provided her client with a false profit and loss statement to cover up the fact that the Schedule C was completely fabricated.

CONCLUSION

48. Based on my training and experience, and the information provided in this affidavit, I respectfully submit that there is probable cause to believe that TRACI AUSTIN assisted in the preparation of a false and fraudulent federal income tax return, specifically Client C.B.'s 2018 income tax return, in violation of 26 U.S.C. § 7206(2).

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

/s/ Christine Stegner
Special Agent Christine Stegner
Internal Revenue Service – Criminal Investigation

Sworn to before me over the telephone and signed by me pursuant to Fed.R.Crim.P. 4.1 and 4(d) on this 15th day of November, 2021. This application and warrant are to be filed under seal.

Kandis Westmore
The Honorable Kandis Westmore
United States Magistrate Judge