

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

2008 MAY -8 P 12:09

UNITED STATES OF AMERICA )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JOHN THANH HOANG, individually and )  
 d.b.a. TAX-SMART TECHNOLOGY )  
 SERVICES, )  
 )  
 Defendants. )

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Civil No. 1:08 CV 451  
LO/TCB

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The plaintiff, the United States of America, alleges against defendants John Thanh Hoang and Tax-Smart Technology Services as follows:

1. This action is brought under 26 U.S.C. ("I.R.C.") §§ 7402, 7407, and 7408 to enjoin John Thanh Hoang and Tax-Smart Technology Services, individually and through any other name or entity, and their representatives, agents, servants, employees, attorneys, and anyone in active concert or participation with them, from directly or indirectly:
  - a. Preparing, assisting in the preparation of, or filing others' federal income tax returns;
  - b. Practicing or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service ("IRS");

- c. Organizing, promoting, or selling business or tax services that facilitate or promote noncompliance with federal tax laws or understatement of federal tax liability;
- d. Making false representations that:
  - (i) Customers or prospective customers may take business tax deductions without regard to whether the customer is engaged in a *bona fide* business activity;
  - (ii) Customers may claim a tax deduction for software depreciation under I.R.C. §§ 167(a), 167(f), or 197 without regard to the value of the software or whether the software is used in connection with a legitimate business venture;
- e. Engaging in any activity subject to penalty under I.R.C. § 6700, which penalizes persons who make gross valuation overstatements regarding a material matter in connection with promoting a plan or arrangement.
- f. Engaging in any activity subject to penalty under I.R.C. § 6700, which penalizes making or causing another to make a statement regarding the allowability of a deduction or credit, the excludability of income, or the securing of a tax benefit by reason of possessing an interest or participating in a plan or arrangement, which statement the person knows or has reason to know is false as to a material matter.
- g. Engaging in any activity subject to penalty under I.R.C. §§ 6694, which penalizes tax preparers for filing federal income tax returns with unrealistic positions.

h. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

2. The Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, has requested this action, and a delegate of the Attorney General of the United States commences this action pursuant to the provisions of I.R.C. §§ 7402, 7407, and 7408.

3. This Court has jurisdiction under 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), 7407(a), and 7408(a).

4. Venue is proper in this court pursuant to 28 U.S.C. § 1391.

### **Defendants**

5. John Thanh Hoang (“Hoang”) resides within this judicial district and is a registered partner in Tax-Smart Technology Services, a Florida partnership doing business from an office located within this judicial district.

6. Tax-Smart Technology Services (“Tax Smart”) is a registered Florida partnership doing business from an office within this judicial district.

### **Defendants’ Activities**

7. Hoang is a partner in Tax Smart. Hoang conducts seminars and operates a website to promote the “tax strategies” Tax Smart offers. Hoang is a certified public accountant and a former lawyer, who was at one time a member of the Maryland bar.

8. According to its own internal documents and promotional materials, Tax Smart does not offer its customers a business opportunity, but instead a “tax strategy.”

9. Under the "strategy," Tax Smart sells its customers a website, which consists of source code applied to a domain name. The source code is written by a third party, Universal Interactive, which also registers the domain name to which the source code is later applied. In some cases, the sale contracts list Tax Smart as the seller of the source code, and in other cases, the sale contracts list Universal Interactive as the seller of the source code. The customer pays Tax Smart a fraction of the stated sale price in cash, by credit card, or by assignment of a portion of a future federal tax refund. The down payment is typically one-sixth or one-seventh of the stated sales price. The customer finances the balance of the stated sale price with an interest-bearing promissory note due to Tax Smart in installments over a nine-year period.

10. Contemporaneous with the sale contract, customers enter a licensing arrangement with Tax Smart that operates similarly to a lease-back. Under the terms of the licensing provision, the customer licenses Tax Smart to use the source code that operates the just-purchased website for a nine-year period. In return for this license, Tax Smart pays the customer an annual licensing fee. Payment of the licensing fee occurs only on paper; money does not change hands. The effect of the licensing fee for the customer is to negate both the interest accruing on the promissory note and to eliminate the principal at the end of the nine-year contract term.

11. The annual licensing fee is divided into two portions, which are accounted for in different ways. More than half of the annual licensing fee is allocated to offsetting the interest accruing on the promissory note during that year and making a small reduction in the principal. The remaining portion of the licensing fee is held in reserve by Tax Smart until the end of the

nine-year contract term. At the end of the nine years, these reserved funds offset the remaining balance on the promissory note.

12. The combined effects of the financing arrangements described in paragraphs 10 and 11 result in customers incurring absolutely no financial obligation beyond their initial down payment when contracting with Tax Smart or Universal Interactive to purchase a website. Customers' only cost in connection with this scheme is the money paid up front. The promissory note is a sham and the customers' financial obligation is illusory.

13. The stated prices of the websites—of which customers pay only a fraction—bear no relation to the websites' actual market value. Defendants sell the websites at stated prices vastly exceeding the value of the website's source code, domain name, and the value of the services necessary to keep the website operational.

14. The scheme generates money for customers when Hoang, on behalf of Tax Smart, prepares federal income tax returns for customers and takes depreciation deductions on Schedule C of customers' 1040 federal income tax returns. More specifically, Hoang deducts as a depreciation expense one-third of the stated *sale price* of the website in each of the first three years of the strategy.

15. Because the amount of the deduction is based on a stated sales price that does not reflect the true market value of the website, and because the customer only pays a fraction of the stated sales price, this depreciation deduction gives the customer a significant tax savings for the first three tax years that is unrelated to any genuine business expense or depreciation loss. Under the scheme, the customer pays only the down payment, purchases a product worth as little as or less than the down payment, but claims the entire stated sales price as a business loss in the form

of depreciation deductions over a three year period. Thus, the customer exchanges a small quantity of cash and a sham promissory note for a worthless website and a large tax deduction.

16. Sample pro forma accounting statements in internal Tax Smart documents and promotional materials demonstrate that under the Tax Smart scheme, customers generate cash flow through tax savings and not through profits generated by *bona fide* business activity.

17. Hoang prepared at least 527 returns for the 2003 through 2006 tax years showing deductions claimed under this strategy. None of the returns featuring these deductions that the IRS has examined have been determined correct.

18. Estimating conservatively, the IRS calculates this strategy costs the United States \$11,600 in tax understatements per return, for an estimated total loss of \$6,100,000 since 2003.

19. The IRS notified Hoang in November 2005 that it intended to investigate the sale of the strategy and the associated Schedule C deductions. Defendants continued to sell this strategy, and returns Hoang prepared for 2006 show deductions under this strategy. Tax Smart's website currently promotes this scheme.

20. Hoang allowed customers to backdate agreements. Hoang has backdated some sales contracts to January 1 of the year in which the sale occurred or January 1 of the year before the sale occurred. Then Hoang prepares the customer's tax return, claiming a full-year's depreciation deduction for the purported year of sale.

21. On several occasions, Defendants sold the same source code applied to the same domain name to multiple customers. Tax Smart's website, [www.taxsmart.info](http://www.taxsmart.info), presently lists as available for purchase websites that defendants have already sold to other customers.

22. As part of his promotional efforts, Hoang has promised to defend any Tax Smart customer audited by the IRS. When the IRS audited six Tax Smart customers, Hoang represented them and scheduled and then canceled appointments with investigators, failed to provide requested documentation, and refused to contact his audited customers. These practices were intended to and did obstruct IRS enforcement of the tax laws.

#### **Harm to the Public**

23. Defendants' customers have been harmed because they have paid to obtain tax savings to which they are not legally entitled but which defendants assured them they were entitled to. Their customers are thereby subjected to interest and possible penalties.

24. The United States is harmed because defendants' customers are not reporting and paying their correct tax liabilities.

25. The United States is further harmed because the IRS is forced to devote scarce resources to identifying and recovering lost tax revenues from defendants' customers. Moreover, given the IRS's limited resources, identifying and recovering all revenues lost from defendants' preparation of false and fraudulent returns may be impossible.

26. In addition to harm caused by defendants' preparation of tax returns that understate their customers' tax liabilities, defendants' activities undermine public confidence in the fairness of the federal tax system and encourage noncompliance with the internal revenue laws.

#### **Failure to File Tax Returns**

27. Hoang has not filed his own federal income tax returns for any tax year since 2000.

**COUNT I:**  
**Injunction under I.R.C. § 7408 for Violations of I.R.C. §§ 6700 and 6701**

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

29. I.R.C. § 7408 authorizes a court to enjoin conduct subject to penalty under §§ 6700 or 6701 if the court finds injunctive relief is appropriate to prevent recurrence of the conduct.

30. I.R.C. § 6700 imposes a penalty on any person who organizes or participates in the organization of any plan or arrangement, and who, in connection with that plan or arrangement, makes or furnishes or causes another to make or furnish a statement with respect to the allowance of a deduction or credit that the person knows or has reason to know is false or fraudulent.

31. Additionally, I.R.C. § 6700 penalizes any person who organizes or participates in the organization of any plan or arrangement, and who, in connection with that plan or arrangement, makes or causes another to make a gross valuation overstatement with regard to any material matter. As defined by the statute, a gross valuation overstatement occurs if the stated value is more than double the correct valuation.

32. I.R.C. § 6701 penalizes any person who aids, assists, procures, or advises with respect to the preparation or presentation of any portion of a return, affidavit, claim or other document relating to a matter arising under the internal revenue laws, and who knows that portion of a return, affidavit, claim or other document will understate another's tax liability.

33. Hoang, acting as a partner in Tax Smart, prepares returns for customers participating in his tax scheme. On his customers' behalf, Hoang claims a deduction for depreciation of software that does not reflect a business loss the customer actually experiences. In some cases, the customer does not actually experience the loss because the sale of the website does not occur



during the tax year but rather during the year the return is filed. In nearly every case, the customer does not experience a business loss because the customer does not have a *bona fide* business purpose, but is instead seeking only to reduce his or her tax liability. In telling customers they can claim deductions based on the bogus website “business,” defendants make false or fraudulent statements regarding deductions to which defendants know or have reasons to know their clients are not entitled. This conduct violates I.R.C. § 6700.

34. Defendants make gross valuation overstatements in promoting their scheme. Defendants know the websites they offer for sale to customers are worth only a fraction of their stated sale price because they pay a third party to construct and operate them. By telling customers that they are purchasing websites for an inflated sale price consisting of the sham note and down payment, defendants make a gross valuation overstatement. This conduct also violates I.R.C. § 6700.

35. Defendants prepare documents and tax returns that understate their customers’ tax liability in violation of I.R.C. § 6701. Defendants know their customers lack a business purpose for their ownership of the websites they purchased from Tax Smart. Defendants know their customers purchase websites from Tax Smart to obtain tax savings and not in a quest for profit. By claiming a business loss for an activity in which defendants know their customers lack a business purpose, and based on overstated asset values, defendants understate their customers’ tax liability in violation of I.R.C. § 6701.

36. Even if defendants’ customers had a *bona fide* business purpose for their participation in the Tax Smart scheme, defendants knowingly aid their customers in understating their tax liability. Because defendants know the websites are not worth the stated sales price,

defendants know their customers do not actually incur a business loss equal to the depreciation deduction taken on their behalf. Even if Tax Smart's customers had a business purpose, by preparing Schedule Cs claiming a depreciation deduction of one-third the inflated sale price, defendants knowingly understate their customers' tax liability in violation of I.R.C. § 6701.

37. The IRS notified Hoang in November 2005 that he was being investigated for the promotion of this tax scheme. Defendants have persisted in promoting this tax scheme and filed 135 returns with fraudulent deductions in 2007 alone. The defendants are likely to continue promoting this tax scheme. Therefore, injunctive relief is necessary to prevent the defendants from further harming the United States with their tax scheme.

#### **COUNT II:**

#### **Injunction under I.R.C. § 7407 for Violation of I.R.C. § 6694 and for Deceptive Conduct**

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

39. I.R.C. § 7407 authorizes a court to enjoin a person from acting as an income-tax preparer if that person has continually or repeatedly: (A) engaged in any conduct subject to penalty under I.R.C. § 6694, which penalizes the preparation or submission of a return containing an unreasonable position, or (D) engaged in any fraudulent or deceptive conduct that substantially interferes with proper administration of the tax laws, and if the court finds a narrower injunction would not prevent recurrence of the conduct.

40. Defendants' conduct violates I.R.C. § 6694 because defendants know or should know their customers are purchasing sham businesses to reap tax savings and are not purchasing legitimate business ventures motivated by a quest for profit. Defendants cannot reasonably believe that depreciation deductions claimed within the context of a sham business will be

sustained on their merits by the IRS. Accordingly, defendants prepared returns understating customers' federal tax liability based upon an unreasonable position in violation of I.R.C. § 6694.

41. Defendants are engaged in fraudulent and deceptive conduct that substantially interferes with proper administration of tax law. Hoang promised to represent Tax Smart customers before the IRS should they be audited. Despite these promises, Hoang has failed to represent customers being audited by the IRS forcing some customers to represent themselves or obtain other representation. In those representations he has undertaken, Hoang has canceled and delayed appointments. These tactics have obstructed the IRS's ability to administer the internal revenue laws.

42. Defendants have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 and fraudulent and deceptive conduct substantially interfering with the proper administration of the tax laws. If defendants are not enjoined from preparing, assisting others in preparing, or filing returns under I.R.C. § 7407, they will continue to substantially interfere with the proper administration of the internal revenue laws.

**COUNT III:  
Injunction under I.R.C. § 7402 for Unlawful Interference with Administration of the  
Internal Revenue Laws and Appropriateness of Injunctive Relief**

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

44. I.R.C. § 7402 authorizes courts to issue relief that is necessary or appropriate to ensure the enforcement of the internal revenue laws.

45. Defendants' conduct causes irreparable harm to the United States. The losses defendants' conduct causes to the United States Treasury are substantial and may be

irrecoverable. The IRS estimates defendants already have cost the United States \$6,100,000 in lost revenue.

46. If defendants are not enjoined, the IRS will have to devote scarce resources auditing and collecting taxes from new Tax Smart customers. Given the demands on the IRS's limited resources, this task may be impossible.

47. Unless defendants are enjoined from substantially interfering with administration and enforcement of the tax laws, they are likely to continue engaging in harmful conduct.

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

A. That this Court find defendants engaged in conduct subject to penalty under I.R.C. § 6700 and that injunctive relief under I.R.C. § 7408 is therefore appropriate to prevent a recurrence of that conduct.

B. That this Court find defendants engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief under I.R.C. § 7408 is therefore appropriate to prevent a recurrence of that conduct.

C. That this Court find defendants engaged in conduct subject to penalty under I.R.C. § 6694 and that injunctive relief under I.R.C. § 7407 is therefore appropriate to prevent a recurrence of that conduct.

D. That this Court find defendants engaged in fraudulent or deceptive conduct substantially interfering with the administration and enforcement of the internal revenue laws and that injunctive relief under I.R.C. § 7407 is therefore appropriate to prevent a recurrence of that conduct.

E. That this Court find defendants engaged in fraudulent or deceptive conduct substantially interfering with the administration and enforcement of the internal revenue laws and that injunctive relief is therefore appropriate to prevent a recurrence of that conduct under the Court's inherent equity powers and I.R.C. § 7402(a).

F. That this Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting defendants, individually and through any other name or entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

- i. Organizing, promoting, or selling business or tax services that facilitate or promote noncompliance with federal tax laws or understatement of federal tax liability;
- ii. Making false representations that:
  - (a) Customers or prospective customers may take business tax deductions without regard to whether the customer is engaged in a *bona fide* business activity;
  - (b) Customers may claim a tax deduction for software depreciation under I.R.C. §§ 167(a), 167(f) or 197 without regard to the value of the software or whether the software is used in a legitimate business venture;
- iii. Engaging in any activity subject to penalty under I.R.C. § 6700, which penalizes persons who make gross valuation overstatements regarding a material matter in connection with promoting a plan or arrangement;

- iv. Engaging in any activity subject to penalty under I.R.C. § 6700, which penalizes making or causing another to make a statement regarding the allowability of a deduction or credit, the excludability of income, or the securing of a tax benefit by reason of holding an interest or participating in a plan or arrangement, which statement the person knows or has reason to know is false as to a material matter;
- v. Engaging in conduct subject to any penalty in the Internal Revenue Code or any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;
- vi. Practicing or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the IRS.

G. That this Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting defendants, individually and through any other name or entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

- i. Preparing, or filing, or assisting in the preparation or filing of federal income tax returns for any person or entity other than themselves;
- ii. Engaging in any activity subject to penalty under I.R.C. §§ 6694, which penalizes tax preparers for filing federal income tax returns with unreasonable positions;
- ii. Understating customers' federal tax liability as subject to penalty under I.R.C. § 6694.

H. That this Court order defendants to put a copy of this order on Tax Smart's website ([www. taxsmart.info](http://www.taxsmart.info)), in particular on its "Home" page (i.e., the first page visible when accessing the website), prominently featured at the top so it is visible.

I. That this Court retain jurisdiction over this action to implement and enforce this Final Judgment or Permanent Injunction and all other decrees or orders necessary or appropriate to the public interest.

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

K. That this Court grant that the United States be entitled to conduct discovery permitted under the Federal Rules of Civil Procedure to monitor defendants' compliance with the terms of this Final Judgment of Permanent Injunction.

Dated this <sup>18<sup>th</sup></sup> ~~14th~~ day of <sup>May</sup> ~~March~~, 2008.

Respectfully submitted,

CHUCK ROSENBERG  
United States Attorney



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ROBERT K. COULTER  
Virginia State Bar No. 42512  
Attorney for the United States  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314-5794  
Telephone: (703) 299-3700  
Facsimile: (703) 549-5202  
Email: Robert.Coulter@usdoj.gov

NATHAN J. HOCHMAN  
Assistant Attorney General



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ROBERT E. FAY  
Virginia State Bar No. 74871  
Attorney for the United States  
Trial Attorney, Tax Division  
U.S. Department of Justice  
PO Box 7238  
Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 305-9209  
Facsimile: (202) 514-6770  
Email: Robert.E.Fay@usdoj.gov