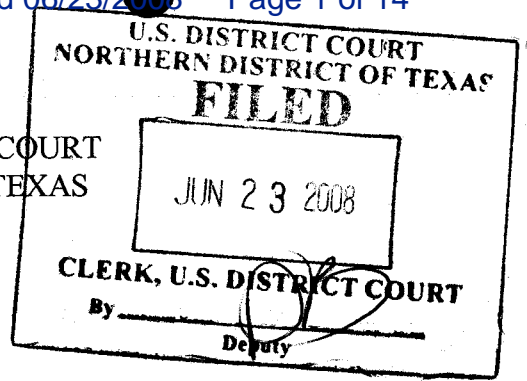


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ORIGINAL



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LENNON R. MADZIMA, individually )  
 and doing business as SAMEDAY TAX )  
 SERVICES, )  
 )  
 Defendant. )

Civil No.

**3 - 0.8 CV 1043 - B**

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, the United States of America, alleges against Defendant, Lennon R. Madzima, individually and doing business as Sameday Tax Services, as follows:

1. This is a civil action brought by the United States under sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) ("IRC") to enjoin Defendant Lennon R. Madzima and anyone in active concert or participation with him, from:

- (a) acting as a federal income tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself;
- (b) understating customers' liabilities as penalized by IRC § 6694;
- (c) engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700 6701, or any other penalty provision in the IRC; and
- (d) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

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, pursuant to the provisions of IRC §§ 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and IRC §§ 7402(a), 7407, and 7408.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because Lennon R. Madzima resides in Mansfield, Texas, and a substantial part of the actions giving rise to this suit took place in this district.

### **Defendant's Activities**

5. Madzima is a commercial tax return preparer doing business under the name "Sameday Tax Services." Sameday Tax Services does business at 3530 Forest Lane, Dallas, Texas 75234.

6. Madzima has prepared approximately 2,950 federal income tax returns for customers since 2004, with unusually high annual refund rates ranging from 97 to 100 percent.

7. Madzima prepared more than 1,000 federal income tax returns for customers for processing year 2006 alone, with a 99 percent refund rate.

### **Fuel Tax Credit Fraud**

8. The IRS has identified at least 1,100 returns Madzima prepared from 2005 to 2007 that claim a total of over \$1,000,000 in false fuel tax credits.

9. Madzima has prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms, Madzima

misapplied IRC § 6421(a) (“Fuel Tax Credit”). The fuel tax credit is a credit available only to taxpayers who operate farm equipment or other off-highway business vehicles. The equipment or vehicles must not be registered for highway uses. Madzima improperly claims the credit for customers who do not meet these requirements.

#### **Overview of IRC § 6421(a): Credit for Fuel Tax Paid on Fuels**

10. Fraudulently claiming entitlement to the fuel tax credit is a widespread tax scam that presents a serious enforcement problem for the IRS and is included among the IRS’s “2008 ‘Dirty Dozen’ Tax Scams.” See “Phishing Scams, Frivolous Arguments Top the 2008 ‘Dirty Dozen’ Tax Scams” (available online at: <http://www.irs.gov/newsroom/article/0,,id=180075,00.html>).

11. Section 6421(a) of the IRC provides a credit for fuel used in an off-highway business use. Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered and not required to be registered for use on public highways. IRS Publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines such as generators, compressors, power saws, and similar equipment; (2) for cleaning purposes; and (3) in forklift trucks, bulldozers, and earthmovers. See IRS Publication 225 (2006), Farmer’s Tax Guide, Chapter 14 (2006) (available online at: [http://www.irs.gov/publications/p225/ch14.html#d0e\\_19048](http://www.irs.gov/publications/p225/ch14.html#d0e_19048)).

12. IRS Publication 510 defines a highway vehicle as any “self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions.” A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles

are not eligible for the fuel tax credit. IRS Publication 510 provides the following as examples of highway vehicles, which are not eligible for the fuel tax credit: passenger automobiles, motorcycles, buses, and highway-type trucks and truck tractors. *See* IRS Publication 510 (2007), Excise Taxes for 2007, Chapter 2 (2007) (available online at: <http://www.irs.gov/publications/p510/ch02.html#d0e3538>).

13. In addition, IRS Publication 510 provides the following example of an appropriate application of the fuel tax credit:

Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mower at home does not qualify.

14. The fuel tax credit does not apply to passenger cars or to trucks or other vehicles that are registered or required to be registered to drive on public highways.

#### **Madzima's Fraudulent Claims of the Fuel Tax Credit**

15. Madzima claimed the bogus fuel tax credits on 46 percent of the federal income tax returns that he prepared for customers for processing year 2007.

16. To claim the credits, Madzima prepares IRS Forms 4136 for his customers' returns, falsely stating that the customer has used gasoline for off-highway business purposes. Madzima claimed the fuel tax credit for, among others, customers claiming to be a managing partner, a barber, a cashier, and a loan adviser.

17. Madzima claimed absurdly large credits by falsely reporting purchases of huge quantities of gasoline.

18. For example, Madzima fraudulently prepared 2005 and 2006 federal income tax returns with claimed fuel tax credits for a managing partner based on purported purchases of

8,000 and 9,500 gallons of gasoline for off-highway business use. This customer, whose total reported income for these years was \$10,000 and \$12,000, respectively, would have had to spend \$16,000 in 2005 and \$19,000 in 2006 to purchase that amount of gas at \$2 per gallon.

19. Similarly, Madzima prepared a 2006 return for a customer falsely claiming that the customer, whose occupation is “delivery,” bought 9,500 gallons of gasoline for off-highway business use. At \$2 per gallon, the customer would have had to spend \$19,000 for that fuel. However, the customer’s return shows a gross income of only \$6,450.

20. Madzima also prepared a 2005 return for another customer falsely claiming that the customer bought 15,600 gallons of gasoline for off-highway business use. At \$2 per gallon, the customer would have had to spend \$31,200 for that fuel. The customer’s return shows a gross income of \$35,289. Other returns that Madzima prepared contain similar, blatantly fraudulent claims of the fuel tax credit.

#### **Telephone Excise Tax Refund Fraud**

21. Madzima also prepares returns with inflated telephone excise tax refund credits. The filing of fraudulent claims for telephone excise tax refunds was the number one fraudulent scheme among the IRS’s “2007 ‘Dirty Dozen’ Tax Scams.” *See* “Fraudulent Telephone Tax Refunds, Abusive Roth IRAs Top Off 2007 ‘Dirty Dozen’ Tax Scams” (available online at: <http://apps.irs.gov/newsroom/article/0,,id=167983,00.html>).

22. The Telephone Excise Tax Refund (“TETR”) is a one-time credit available on 2006 federal income tax returns, designed to refund previously collected federal excise taxes on long-distance or bundled telephone service from February 2003 through August 2006. Taxpayers could claim the standard TETR credit, which ranged from \$30 to \$60, or could request a refund

based on the actual amount of telephone excise tax they paid.

23. Taxpayers claiming the TETR based on the actual amount of telephone excise taxes they paid were required to report that amount on an IRS Form 8913, "Credit for Federal Telephone Excise Tax Paid," which had to be attached to their 2006 federal income tax return.

24. Madzima prepared federal income tax returns on behalf of customers for tax year 2006 that claimed inflated TETR credits, totaling in excess of \$100,000.

25. For example, one 2006 federal income tax return that Madzima prepared for a customer falsely claimed a \$3,391 TETR credit on the Form 8913 attached to the customer's return. As part of this fraudulent total amount, this customer's return falsely claimed that the customer paid \$1,800 in federal excise taxes for long distance service in one seven-month period from December 2005 to July 2006.

26. Similarly, Madzima prepared a customer's 2006 income tax return falsely claiming a \$1,864 TETR credit on the Form 8913 attached to the customer's return. This customer's return falsely claimed that the customer paid \$1,750 in federal excise taxes for long distance service from December 2005 to July 2006.

27. Madzima prepared at least 30 other customers' 2006 income tax returns falsely claiming TETR credit in the precise amount of \$978 for excise taxes allegedly paid.

#### **Earned Income Credit and other False Claims**

28. Madzima's fraudulent federal tax return preparation is not limited to preparing returns with improper fuel tax credits and false TETR credits. Madzima also prepared returns that falsely claim the earned income tax credit, dependent exemptions, student loan interest deductions, and other fraudulent expenses and deductions.

29. Madzima falsely claimed the fuel tax credit, a child tax credit, and an earned income credit on his own 2005 federal income tax return.

**Failure to Provide the Preparer's Identifying Number under IRC § 6109(a)**

30. Madzima filed in excess of 430 federal income tax returns on behalf of customers for tax years 2005 and 2006 on which Madzima listed his income tax return preparer identification number as the social security number of an individual who was unaware of Madzima's actions.

**Failure to Comply with IRS Request for Information under IRC § 6107(b)**

31. Madzima failed to provide the IRS with copies of returns or claims, or a list of all returns and claims, that Madzima prepared for tax years 2004 through 2006, as the IRS requested on December 27, 2007 under IRC § 6107(b).

**Harm Caused by Madzima**

32. Madzima's customers have been harmed because they paid Madzima fees to prepare tax returns that substantially understate their correct tax liabilities. Many customers now face large income tax deficiencies and may be liable for sizeable penalties and interest.

33. Madzima's conduct harms the United States because his customers are under-reporting and under-paying their correct tax liabilities. The IRS has identified over 1,100 fraudulent federal income tax returns that Madzima prepared since tax year 2004 that claim over \$1,000,000 in fraudulent fuel tax credits alone. This equates to an average of over \$900 in lost revenue per return based solely on Madzima's false fuel tax credit claims.

34. In addition to the direct harm caused by preparing tax returns that understate customers' tax liabilities, Madzima's activities undermine public confidence in the

administration of the federal tax system and encourage noncompliance with the internal revenue laws.

35. Madzima further harms the United States because the Internal Revenue Service must devote its limited resources to identifying Madzima's customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties.

**Count I**  
**Injunction under IRC § 7407**

36. The United States incorporates by reference the allegations in paragraphs 1 through 35.

37. Section 7407 of the IRC authorizes a district court to enjoin an income tax preparer from:

- (a). engaging in conduct subject to penalty under IRC § 6694;
- (b). engaging in conduct subject to penalty under IRC § 6695;
- (c). misrepresenting his eligibility to practice before the Internal Revenue Service or his experience or education;
- (d). guaranteeing the payment of any tax refund or the allowance of any tax credit; or
- (e). 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 the conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court further finds that a narrower injunction (i.e., prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal



revenue laws, the court may enjoin the person from further acting as a federal income tax preparer.

38. Madzima has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by preparing federal income tax returns that understate his customers' liabilities based on unrealistic, frivolous, and reckless positions.

39. Madzima has engaged in conduct subject to penalty under IRC § 6695 by not complying with the IRS's request pursuant to IRC § 6107(b) that Madzima provide to the IRS a customer list or copies of all federal tax returns prepared by Madzima for tax years 2004 through 2006.

40. Madzima has further engaged in conduct subject to penalty under IRC § 6695 by using a social security number that does not belong to him on some of the tax returns he filed on behalf of customers, in violation of IRC § 6109(a)(4).

41. Madzima's continual and repeated violations of IRC §§ 6694 and 6695 fall within IRC § 7407(b)(1)(A) and (D), and thus are subject to an injunction under IRC § 7407.

42. If he is not enjoined, Madzima is likely to continue to file false and fraudulent tax returns.

43. Madzima's continual and repeated conduct subject to an injunction under IRC § 7407, including his continual and repeated misapplication of several credits and deductions, and his flagrant misuse of the fuel tax credit and TETR claims, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Madzima's interference with the proper administration of the internal revenue laws. Thus, he should be permanently barred from acting as a return preparer.

**Count II**  
**Injunction under IRC § 7408**

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

44. Section 7408 of the IRC authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either IRC § 6700 or § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

45. Section 6701(a) of the IRC penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document 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 will result in an understatement of another person's tax liability.

46. Madzima prepares federal tax returns for customers that he knows will understate their correct tax liabilities. Madzima's conduct is thus subject to a penalty under IRC § 6701.

47. If the Court does not enjoin Madzima, he is likely to continue to engage in conduct subject to penalty under IRC § 6701. Injunctive relief is therefore appropriate under IRC § 7408.

**Count III**  
**Injunction under IRC § 7402(a)**  
**Necessary to Enforce the Internal Revenue Laws**

48. The United States hereby incorporates by reference the allegations in paragraphs 1 through 47.

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

50. Madzima, through the actions described above, has engaged in conduct that

substantially interferes with the enforcement of the internal revenue laws.

51. Unless enjoined, Madzima is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Madzima is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.

52. While the United States will suffer irreparable injury if Madzima is not enjoined, Madzima will not be harmed by being compelled to obey the law.

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

54. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

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

A. That the Court find that Lennon Madzima has continually and repeatedly engaged in conduct subject to penalty under IRC §§ 6694 and 6695, and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting Lennon Madzima from acting as a federal income tax return preparer;

C. That the Court find that Lennon Madzima has engaged in conduct subject to a penalty under IRC § 6701, and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

D. That the Court find that Lennon Madzima has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and IRC § 7402(a);

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Lennon Madzima, and all those in active concert or participation with him, from:

- (1). acting as a federal income tax return preparer, or assisting in or directing the preparation or filing of federal tax returns for any person or entity other than himself, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- (2). understating customers' liabilities as prohibited by IRC § 6694;
- (3). engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, 6701, or any other penalty provision in the IRC; and
- (4). engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme.

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Lennon Madzima to contact, within fifteen days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared federal tax returns or claims for a refund for tax years 2004 through 2007 to inform them of the permanent injunction entered against him;

G. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Lennon Madzima to produce to counsel for the United States, within fifteen days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared federal tax returns or claims for a refund for tax years 2004 through 2007;

H. That the Court retain jurisdiction over Lennon Madzima and over this action to enforce any permanent injunction entered against him;

I. That the United States be entitled to conduct discovery to monitor Madzima's compliance with the terms of any permanent injunction entered against him; and

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

DATED: June 19, 2008

RICHARD B. ROPER  
United States Attorney



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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Daniel A. Applegate, United States Dept. of Justice, Tax Div. P.O. Box 7238, Ben Franklin Station, Washington, D.C. 20044

DEFENDANTS

LENNON R. MADZIMA, individually and d/b/a SAMEDAY TAX SERVICES

County of Residence of First Listed Defendant Tarrant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item 4)

CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF Citizen of This State
PTF DEF Incorporated or Principal Place of Business In This State
PTF DEF Incorporated and Principal Place of Business In Another State
PTF DEF Foreign Nation

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 26 U.S.C. sections 7402(a), 7407, 7408

Brief description of cause: Permanently enjoin defendant from preparing or filing federal income tax returns for others

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Injunction CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

6/19/08 [Signature]

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE