

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

UNITED STATES,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 08-104
)	
LINDA G. MCMILLER,)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America, for its complaint against defendant Linda G.

McMiller, states as follows:

1. This is a civil action brought by the United States pursuant to sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (“IRC”) to enjoin Linda G. McMiller, and anyone in active concert or participation with her 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 herself or her family, or appearing as representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- b. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
- c. engaging in activity subject to penalty under 26 U.S.C. § 6701, including preparing and/or assisting in the preparation of documents related to a matter material to the internal revenue laws that include a position that she knows will result in the understatement of tax liability;
- d. understating customers’ liabilities as subject to penalty under IRC § 6694;
- e. engaging in any other activity subject to penalty under IRC §§ 6694, 6701, or any other penalty provision of the IRC; and
- f. engaging in other 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 IRC §§ 7402(a), 7407, and 7408, and 28 U.S.C. §§ 1340 and 1345.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because defendant resides within this judicial district and a substantial part of the conduct described in this complaint occurred in this judicial district.

Defendant and Basic Facts

5. McMiller, an unenrolled tax return preparer, has been preparing tax returns since at least 2000.

6. McMiller resides in Pearland, Texas, within this Court's jurisdiction.

7. From 2000 through October 2007 McMiller conducted business as an unenrolled tax return preparer through Broom Consultants, a registered Texas corporation with its principal place of business at 18100 Upper Bay Road, Suite 111, Houston, Texas 77581, within this district. McMiller prepares fraudulent federal income tax returns for customers by claiming false Schedule A, C, and E expenses and/or deductions.

8. McMiller has prepared at least 236 federal tax returns for customers since 2005.

Defendant's Fraudulent Tax Return Preparation

9. During McMiller's time with Broom Consultants, she prepared and filed federal income tax returns and amended tax returns for customers for tax years 2000 through 2006.

10. These tax returns contained materially false and fraudulent claims of deductions and expenses, including fictitious and/or inflated Schedule A deductions (such as charitable contributions, job related expenses, and medical expenses), Schedule C deductions (such as, car and truck expenses, and legal expenses), and Schedule E deductions (such as, bogus commissions) which resulted in fraudulently understated tax liabilities on her customers' returns.

11. McMiller prepared returns using tax preparation software. She had access to her customers' records and accounting books such as QuickBooks in order to prepare the income tax returns including the Schedules A, C and E. McMiller's customers stated that the returns prepared by McMiller included inflated and completely fabricated expense amounts. In particular, some stated that although they incurred no legal and professional fees during the year, the returns prepared by McMiller revealed high expense amounts for legal and professional fees.

12. McMiller knew that the tax returns she prepared contained false information that resulted in tax understatements and that her customers were not entitled to these deductions.

13. For example, the IRS discovered that McMiller prepared a 2005 Form 1040 tax return (dated March 20, 2006) for one customer on which she inflated charitable contributions by \$3,800 on Schedule A. During an IRS audit the customer confirmed that the contribution amount McMiller put on the return was inflated.

14. The following chart provides some specific examples of Linda McMiller's fraudulent Schedule A, C, and E deductions, which her customers confirmed were inflated or fabricated:

Tax Year and Schedule	Deduction Included on Customer's Return	Amount that the IRS determined was fabricated or inflated
2005 Form 1040, Schedule A	Charitable Contributions	\$13,942
2004 Form 1040, Schedule C	Vehicle expenses	\$6,250
2004 Form 1040, Schedule C	Legal and professional services	\$22,500
2004 Form 1040, Schedule C	Computer Service	\$885
2004 Form 1040, Schedule C	Employee Benefits	\$5,613
2004 Form 1040, Schedule C	Supplies Expense	\$919
2005 Form 1040, Schedule E	Auto and Travel	\$1,613
2005 Form 1040, Schedule E	Commissions	\$8,500
2005 Form 1040, Schedule E	Repairs	\$2,500
2005 Form 1040, Schedule E	Legal and Professional Fees	\$4,300
2005 Form 1040, Schedule E	Insurance	\$1,280

Harm to the public

15. McMiller's preparation of false and fraudulent tax returns, to the extent that the Internal Revenue Service has not detected them, has resulted in her customers receiving substantial federal income tax refunds to which they are not legally entitled and in not reporting and paying taxes that they owe.

16. McMiller's conduct harms the United States because her customers are not reporting and paying their correct tax liabilities. The IRS has audited twelve of McMiller's customers' returns since 2000. The twelve audits resulted in total increases in taxes of \$258,719, for an average of \$21,560 per customer.

17. McMiller has prepared 236 federal income tax returns since January 1, 2005.

Assuming an average harm per customer of \$21,560, McMiller's scheme may have cost the Treasury \$5 million or more.

18. If McMiller is not enjoined, her future customers are likely to incur liabilities for taxes interest and penalties and may incur criminal penalties.

19. In addition to the harm caused by her preparation of tax returns that understate her customers' tax liabilities, McMiller's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

20. McMiller further harms the United States because the Internal Revenue Service must devote its limited resources to identifying McMiller's customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. Given the IRS's limited resources, identifying and recovering all revenues lost from McMiller's preparation of false and fraudulent returns may be impossible.

Count I

Injunction under I.R.C. § 7407

21. The United States incorporates by reference the allegations in paragraphs 1 through 20.

22. IRC § 7407 authorizes a district court to enjoin a tax preparer from:

- A. engaging in conduct subject to penalty under I.R.C. § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position that is not adequately disclosed or that is frivolous); or
- B. 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 injunctive relief is appropriate to prevent the recurrence of such conduct.

Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court 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 return preparer.

23. McMiller has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing federal tax returns that understate her customers' tax liabilities based on unrealistic and frivolous positions.

24. McMiller's continual and repeated violations of I.R.C. § 6694 fall within I.R.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under I.R.C. § 7407.

25. If McMiller is not permanently enjoined from preparing tax returns, she is likely to continue to prepare false and fraudulent tax returns.

26. McMiller's repeated and continual conduct subject to injunction under I.R.C. § 7407 demonstrates that a narrow injunction prohibiting only specific misconduct would be insufficient to prevent her interference with the proper administration of the internal revenue laws. Thus, McMiller should be permanently barred from acting as a return preparer.

Count II

Injunction under I.R.C. § 7408

27. The United States incorporates by reference the allegations in paragraphs 1 through 26.

28. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. § 6701 if injunctive relief is appropriate to prevent

recurrence of such conduct.

29. I.R.C. § 6701 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 a 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.

30. McMiller prepares federal tax returns for customers that she knows will understate their correct tax liabilities. McMiller's conduct is thus subject to a penalty under I.R.C. § 6701.

31. If the Court does not enjoin McMiller, she is likely to continue to engage in conduct subject to penalty under I.R.C. § 6701. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III

Injunction under I.R.C. § 7402(a) for unlawful interference with the enforcement of the internal revenue laws

32. The United States incorporates by reference the allegations of paragraphs 1 through 31.

33. I.R.C. § 7402 authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

34. McMiller, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

35. Unless enjoined, McMiller is likely to continue to engage in such improper conduct. If the Court does not enjoin McMiller from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury.

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

37. If McMiller is not enjoined, she is likely to continue to interfere with the enforcement of the internal revenue laws.

38. An injunction under IRC § 7402 is necessary and appropriate, and the United States is entitled to injunctive relief under IRC § 7402.

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

A. That the Court find that Linda McMiller has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 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 find that Linda McMiller has engaged in conduct subject to a penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Linda McMiller 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 I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Linda McMiller and anyone acting in concert with her 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 herself or her family, or appearing as representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- b. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
- c. engaging in activity subject to penalty under 26 U.S.C. § 6701, including preparing and/or assisting in the preparation of documents related to a matter material to the internal revenue laws that include a position that she knows will result in the understatement of tax liability;
- d. understating customers' liabilities as subject to penalty under IRC § 6694;
- e. engaging in any other activity subject to penalty under IRC §§ 6694, 6701, or any other penalty provision of the IRC; and
- f. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to IRC § 7402, enter an injunction requiring McMiller within fifteen days to contact by United States Mail and, if an e-mail address is known, by e-mail, all persons for whom she prepared a federal tax return since January 1, 2004 and to inform them of the Court's findings concerning McMiller's improper return preparation conduct and enclose a copy of the permanent injunction against them;

F. That the Court, pursuant to IRC § 7402, enter an injunction requiring McMiller to produce to counsel for the United States within fifteen days a list that identifies by name, social security number or other tax identification number, address, e-mail address, and telephone number and tax period(s) all persons and entities for whom she prepared federal tax returns or claims for a refund since January 1, 2004;

G. That the Court retain jurisdiction over Linda McMiller and over this action to enforce any permanent injunction entered against defendant;

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

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

DATED: May 5, 2008

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