

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No. 07-cv-99999
)	FILED: MARCH 13, 2009
MARIA COLICA, individually,)	09CV1595
and EL CAMINANTE, INC.)	JUDGE SHADUR
)	MAGISTRATE JUDGE COLE
Defendants.)	BR

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America seeks a permanent injunction against Maria Colica and her father’s company, El Caminante, Inc. (hereinafter, “defendants”), permanently barring defendants from claiming false fuel tax credits and engaging in other conduct subject to penalty under the Internal Revenue Code (“IRC”).

1. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a deputy of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of IRC (26 U.S.C.) §§ 7401, 7402, 7407 and 7408.

Jurisdiction and Venue

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

3. This is a civil action brought by the United States under IRC §§ 7402(a), 7407, and 7408 to enjoin defendants and anyone in active concert or participation with them from:

- A. understating customers' liabilities as subject to penalty under IRC § 6694;
- B. engaging in conduct subject to penalty under IRC § 6695;
- C. engaging in conduct subject to penalty under IRC § 6701;
- D. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6701, or any other penalty provision of the IRC; and
- E. engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because a substantial portion of the activities occurred within this district.

Defendants

5. Maria Colica is a paid federal tax return preparer operating in the Chicago, Illinois, area.

6. Colica is employed by El Caminante, Inc., which is a corporation located at 3442 West Irving Park Road, in Chicago, Illinois, that prepares federal tax returns for others.

7. Defendants have been preparing and filing federal income tax returns for others since at least 1992.

8. From 2004 through 2007, defendants have prepared and filed over 7,600 federal income tax returns for customers.

9. Colica also works as an insurance agent at the same address.

Fraudulent Fuel Tax Credit Deductions

10. Defendants have prepared at least 20 blatantly fraudulent federal income tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels," for tax years 2005 and 2006. In using and preparing these forms, defendants fraudulently applied IRC §§

6421(a). The fuel tax credit under IRC § 6421(a) is available only to taxpayers who operate farm equipment or other vehicles for off-highway business use. Moreover, the equipment or vehicles using the fuel must not be registered for highway uses.

Overview of IRC § 6421

11. Fraudulently claiming this fuel tax credit is a widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, defendants improperly claimed the fuel tax credit for their customers' purported business motor fuel purchases.

12. Section 6421(a), IRC, provides a tax 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#d0e1948>).

13. 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 (2006), Excise Taxes for 2006, Chapter 2 (2006) (available online at: <http://www.irs.gov/publications/p510/ch02.html#d0e3533>).

14. 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.

15. In short, the fuel tax credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways.

Defendants’ Fraudulent Claims of the Fuel Tax Credit

16. Defendants prepared federal income tax returns for customers and improperly reduced their reported tax liabilities by claiming bogus fuel tax credits under IRC § 6421. The IRS has determined that at least 20 federal income tax returns defendants prepared for customers claimed such false fuel tax credits.

17. Defendants prepared false IRS Forms 4136 for customers, falsely claiming that those customers had used gasoline for qualified off-highway business purposes.

18. The following chart shows four examples of defendants’ fraudulent fuel tax credit claims on 2005 and 2006 federal income tax returns:

Name, profession, city and state of customer	Amount of off-highway business use of gasoline claimed on Form 4136	Cost of claimed business use of gasoline*	Estimated yearly/daily mileage**	Total Income	Amount of gasoline credit	Refund Requested

Vela; Truck Driver; Joliet, IL	33,600 gallons	\$67,200	<i>672,000</i> miles per year / <i>1,841</i> miles per day	\$12,218	\$8,175	\$10,902
Zunigas; Truck Driver; Romeoville, IL	25,543 gallons	\$51,086	<i>510,860</i> miles per year / <i>1,400</i> miles per day	\$11,660	\$6,226	\$7,518
Leon; Truck Driver; Palatine, IL (2005 return)	17,107 gallons	\$34,214	<i>342,140</i> miles per year / <i>937</i> miles per day	\$10,074	\$4,168	\$5,406
Leon; (2006 return)	15,509	\$31,018	<i>310,180</i> miles per year / <i>850</i> miles per day	\$12,943	\$3,769	\$4,796

* Estimated total cost based on \$2.00 per gallon.

** Estimated mileage based on 20 miles per gallon.

19. On the returns in the table above (and on other returns), defendants fraudulently claimed that their customers purchased large quantities of fuel for off-highway business purposes. For example, Colica claimed that Carlos Vela, a truck driver, purchased 33,600 gallons of gasoline in 2005, which would have cost \$67,200. However, Vela's adjusted gross income for the year was only \$12,218. Thus, Vela could not have afforded to purchase the gasoline Colica claimed he purchased. What is more, to use that volume of gasoline, assuming mileage of 20 miles per gallon, Vela would have to have driven 672,000 business miles – off-highway – during the year. That's 1,841 miles per day, every day of the year. This example

again shows the blatantly fraudulent nature of defendants' preparation of federal income tax returns abusing the fuel tax credit.

20. On the returns depicted above (and on others), Colica openly described her customers as truck drivers. This description further exposes Colica's fraud because only customers using fuel for certain *off-highway* business uses are entitled to these tax credits, not truck drivers.

Lack of Due Diligence For Earned Income Tax Credits (EITC)

21. Defendants also failed to satisfy the due diligence requirements under IRC § 6695(g).

22. The Internal Revenue Code and Treasury Regulations require tax return preparers to exercise "due diligence" in determining whether customers qualify for the Earned Income Tax Credit (EITC). Among the due diligence requirements under Treasury Regulations § 1.6695-2(b)(3), return preparers must:

- A. not know or have reason to know that any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, the EITC is incorrect; and
- B. not ignore the implications of information furnished to, or known, and must make reasonable inquiries if the information furnished to or known by the preparer appears to be incorrect, inconsistent, or incomplete.

23. In claiming Earned Income Tax Credits on customers' federal income tax returns, defendants have continually and repeatedly failed to satisfy the EITC due diligence requirements imposed by 26 U.S.C. § 6695(g) and Treasury Regulation § 1.6695-2(b)(3).

24. For example, on November 14, 2007, Colica admitted to the IRS that she *never* questions the truthfulness or validity of EITC-related information that her customers provide, such as filing status, income amount, or dependent information. Instead, she simply claims whatever information will maximize her customers' EITC and understate their tax liability. This is improper because she is not making "reasonable inquires if the information furnished to or known by the preparer appears to be incorrect, inconsistent, or incomplete." Instead, she is knowingly using false or suspicious EITC-related information to claim EITCs for her customers.

25. Colica prepared Carlos Vela's 2004 and 2005 federal income tax returns, and claimed bogus EITCs on both returns. Specifically, Colica falsely claimed the "head of household" filing status on both returns, which inflated the size of the EITCs and reduced Vela's tax liability. As the IRS learned during its investigation, Colica should have claimed the "single" filing status instead.

26. As another example of Colica's EITC fraud, she fraudulently claimed the "head of household" filing status on customer Maximo Leon's 2004 federal income tax return. Colica should have claimed the "single" filing status on Leon's return.

Count I

Injunction under IRC § 7407

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

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

- A. engaging in conduct subject to penalty under IRC § 6694;
- B. engaging in conduct subject to penalty under IRC § 6695;

- C. failing to comply with an IRS request under IRC § 6107(b);
- D. misrepresenting his experience or education as a tax return preparer; 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 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 tax return preparer entirely.

29. Defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by willfully and knowingly preparing federal income tax returns for customers that improperly understate customers' tax liabilities based on unrealistic, frivolous, and reckless positions.

30. Defendants have continually and repeatedly violated IRC § 6694 by preparing and filing federal income tax returns claiming fraudulent fuel tax credits for off-highway business uses.

31. Defendants have continually and repeatedly violated IRC § 6695 by failing to conduct due diligence with respect to EITC claims, and, more specifically, knowingly claiming false filing statuses for customers to decrease their tax liabilities.

32. Defendants' 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.

33. If they are not enjoined, defendants are likely to continue to file false and fraudulent tax returns.

Count II

Injunction under IRC § 7408

34. The United States incorporates by reference the allegations in paragraphs 1 through 33.

35. Section 7408(a)-(c), 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.

36. Section 6701(a), 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 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.

37. As detailed above, defendants have knowingly and willfully prepared false federal tax returns for customers that they knew would understate the customers' correct tax liabilities. They intentionally filed false fuel tax credits, and knowingly claimed the wrong filing status to increase EITCs. Defendants' conduct is thus subject to penalty under IRC § 6701.

38. If the Court does not enjoin defendants, they are likely to continue engaging 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

39. The United States incorporates by reference the allegations of paragraphs 1 through 38.

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

41. Defendants, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. They intentionally filed false fuel tax credits, and knowingly claimed the wrong filing status to increase EITCs.

42. Unless enjoined, defendants are likely to continue engaging in this improper conduct. If defendants are 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.

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

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

WHEREFORE, the United States prays for the following:

1. That the Court find that Maria Colica and El Caminante, Inc., have continually and repeatedly engaged in conduct subject to penalty under IRC §§ 6694 and 6695, and have continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially

interferes with the administration of the tax laws;

2. That the Court find that Maria Colica and El Caminante, Inc., have engaged in conduct subject to penalty under IRC § 6701, and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

3. That the Court find that Maria Colica and El Caminante have 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);

4. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Maria Colica, El Caminante and all those in active concert or participation with them from:

- A. understating customers' liabilities as subject to penalty under IRC § 6694;
- B. engaging in conduct subject to penalty under IRC § 6695;
- C. understating customers' liabilities as subject to penalty under IRC § 6701; and
- D. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6701, or any other penalty provision of the IRC; and engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

5. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring that defendants, within 30 days of entry of the injunction, contact by United States mail and, if an e-mail address is known, by e-mail, all persons for whom they prepared a federal tax return to inform them of the Court's findings concerning the falsity of defendants' prior representations and enclose a copy of the executed permanent injunction against them, and file

with the Court a sworn certificate stating that they have complied with this requirement;

6. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Maria Colica and El Caminante to produce to counsel for the United States within 30 days a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom she or the corporation prepared federal tax returns or claims for a refund since January 1, 2004;

7. That the Court retain jurisdiction over Maria Colica, El Caminante and over this action to enforce any permanent injunction entered against defendants;

8. That the United States be entitled to conduct discovery to monitor defendants' compliance with the terms of any permanent injunction entered against them; and

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

DATED: March 13, 2009.

Respectfully submitted,

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