

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

2009 FEB 24 AM 10:00

U.S. DISTRICT COURT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
SHIRLEY CLARK, individually and)
doing business as NICHET)
CORPORATION,)
Defendant.)

Case Number:

3:09-cv-169-f-34 MCR

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America complains against defendant Shirley Clark, individually and doing business as Nichet Corporation, Inc., as follows:

Nature of the Action

1. 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 Internal Revenue Code (I.R.C.) (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 I.R.C. §§ 7401, 7402(a), 7407, and 7408.

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

- A. 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 herself, or appearing as representatives on behalf of any person or organization before the Internal Revenue Service;

- B. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents or forms for others;
- C. engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6701, or any other penalty provision of the I.R.C.; and
- D. engaging in other conduct that 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 Clark resides in Jacksonville, Florida, within this judicial district and a substantial part of the actions giving rise to this suit took place in this district.

Defendant and Basic Facts

5. Shirley Clark is a paid federal tax return preparer, d/b/a Nichet Corporation, operating at 2901 Commonwealth Ave., Jacksonville, Fl. 32254.

6. Clark owns and manages the Nichet Corporation and is licensed with the State of Florida as a return preparer.

7. Regarding tax years 2004-2007, Clark prepared approximately 1,250 tax returns for compensation. Since 2005, 97% of the returns Clark prepared have claimed a refund.

8. Clark is a federal income tax return preparer who prepares fraudulent tax returns for her customers on which she has included bogus claims for fuel tax credits, false dependent exemption claims, claims of questionable filing status, and dubious W-2 and wage claims.

Fuel Tax Credit Fraud

9. Clark 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 Clark

misapplied I.R.C. § 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 or equipment. The equipment or vehicles must not be registered for highway uses; meaning that fuel purchased by truck drivers and companies for commercial transport does not qualify.

10. The IRS has identified at least 96 federal tax returns prepared and/or e-filed by Clark during the 2004 through 2006 filing seasons claiming nearly \$750,000 in fraudulent fuel tax credits.

Overview of I.R.C. § 6421(a): Credit for Federal Tax Paid on Fuels

11. Clark fraudulently claims the fuel tax credit for her customers even though those customers do not qualify for the credit.

12. Section 6421(a), I.R.C., 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#d0e19048>).

13. Highway vehicles are not eligible for the fuel tax credit. 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. 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. 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.

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

Clark's Fraudulent Claims of the Fuel Tax Credit

16. Clark prepares federal income tax returns for individuals who are part or full-time wage earners, and improperly reduces her customers' tax liabilities by claiming a bogus fuel tax credit under I.R.C. § 6421.

17. Clark prepares Forms 4136 for her customers falsely stating that the customer has used gasoline for off-highway business purposes. In most cases, Clark claimed the fuel tax credit for city residents who purportedly have jobs as truck drivers.

18. Clark claimed absurdly large credits by falsely reporting purchases of huge quantities of gasoline.

19. For example, Clark fraudulently prepared a 2005 tax return with a reported fuel tax credit for a customer, Timothy Lovett. On the return Clark prepared for Lovett, a truck driver, Clark claimed that he purchased exactly 79,686 gallons of gasoline for “nontaxable use of undyed diesel fuel.” Assuming gas cost \$2.00 a gallon, this means that Lovett spent \$159,372 on gas in 2005. Yet, Lovett’s total reported adjusted gross income for the year was \$3,198. Lovett could not have paid for the gas he claimed on this income. What is more, to use that volume of gasoline, assuming mileage of 20 miles per gallon, Lovett would have to have driven 1,593,720 business miles – off-highway – during the year. This milage equals over 2,000 miles each day of the year, seven days a week. This example shows the blatantly fraudulent nature of Clark’s use of the fuel tax credit.

20. The following chart shows five more examples of Clark’s fraudulent preparation of federal income tax returns for the 2005 year using the fuel tax credit:

Taxpayer	Amount of off-highway use of gasoline claimed on Form 4136	Cost of claimed business use of gas*	Estimated yearly/daily mileage non-highway driving**	Adjusted Gross Income	Amount of gasoline credit claimed
Lee and April Roberson	82,076 gallons	\$164,152	1,641,520 per year / 4,497 per day	\$70,415	\$13,953
Edward & Kimberly Johnson	88,794 gallons	\$177,588	1,775,880 per year / 4,865 per day	\$57,515	\$15,095
Kevin Easley	127,890 gallons	\$255,780	2,557,800 per year / 7,007 per day	\$46,078	\$21,741
Henry Tookes	105,216 gallons	\$210,432	2,104,320 per year / 5,765 per day	\$45,245	\$17,887
Ramon Payano	97,827 gallons	\$195,654	1,956,540 per year / 5,360 per day	\$25,580	\$16,631

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

** Estimated milage based on 20 miles per gallon and 365 days per year.

21. As stated above, Clark prepared at least 96 federal tax returns that claimed false and fraudulent fuel tax credits for the 2004 through 2006 tax years.

Other Bogus Tax Credits and/or Deductions

22. Clark's fraudulent federal tax return preparation is not limited to preparing returns with bogus fuel tax credits. Clark also prepares returns including false dependent exemption claims, improper filing status, and dubious Forms W-2 and wage claims. On many of these returns Clark prepares, she fabricates income and expenses in order to maximize their earned income tax credit.

23. The earned income tax credit is a refundable credit for people who work and have low wages. A refundable tax credit reduces the amount of tax owed and if the credit is larger than the tax owed, it results in a refund. The earned income tax credit is calculated based on the individual's earned income and number of dependents, with a maximum of two dependents. As an example, in 2007, for a single person with two dependents the credit gets larger as the individual's income rises until it reaches \$11,750 of earned income; the income range from \$11,750 to \$15,399 received the maximum credit, \$4,716; and anyone with earned income beyond \$15,399, received a lesser credit, phasing down to zero as earnings pass \$37,783. Therefore, for a single person with two dependents, the EITC "sweet spot," meaning the income amount that would generate the most credit, was between \$11,750 and \$15,399. This "sweet spot" was lower if the individual had fewer dependents.

24. Clark prepared income tax returns with fabricated earned income and/or expenses for her customers in order to attain the “sweet spot” and improperly maximize the earned income tax credit. In most cases, without the fake earned income and/or expenses, her customers would not have earned enough to qualify for the earned income tax credit.

25. For example, Clark prepared the 2006 tax return for Kyhler and Travis Buggest. This return reported wages of \$17,393, however, only one Form W-2 was attached to the return and it reported only \$3,893 in income. That Form W-2 was never reported to the IRS and is likely false. Other Forms W-2 were reported to the IRS regarding the Buggests and those showed wages paid totaling just over \$8,000. Additionally, the tax return Clark prepared listed two dependant children. IRS records indicate that one of those two children has been passed around between three different filers for three different years. The unverified \$17,393 income combined with the suspect claim of two, instead of one, dependant children, put the Buggests near the “sweet spot” amount of EITC, which allowed Clark to falsely claim that they overpaid their taxes.

26. Clark prepared a 2006 tax return for Latonya McNair that showed wages of \$3,821 and Schedule C business income of exactly \$11,000 for beautician services. No business name is listed on the return. The IRS contacted directory assistance to obtain a phone listing for a beauty salon at the address listed on the Schedule C, “Profit or Loss from a Business.” However, no listing for a hair care or styling business was associated with the address. The Schedule C listed the business as making gross receipts of \$11,000, yet having no cost of goods sold or expenses. It is highly unlikely that a beauty salon or Ms. McNair could function as a “beautician” without purchasing supplies and/or incurring other expenses. Moreover, Clark claimed that McNair had

two dependant children, and claimed the Earned Income Credit. Without the purported income from the alleged beauty salon, McNair's wages are not high enough to require her to file a return and McNair would not get a refund. By including the bogus \$11,000 in beauty salon income, Clark prepared a return that fraudulently claimed – indeed maximized – the EITC and resulted in a substantial overpayment, which in turn resulted in a \$3,867 refund.

27. In fact, Clark engaged in a pattern of using fabricated beauty salon or beautician income on Schedules C to hit the EITC sweet spot for her customers. For example, Clark prepared 2006 returns for two separate customers that resided at the same address: one for Timolin S. Baker and another for Timeka M. Wright. Clark claimed "Head of Household" filing status for both Baker and Wright, splitting their dependents and maximizing both of their EITC claims.

28. On Baker's return Clark claimed business income of \$12,560 – right in the "sweet spot" for the EITC – from a beauty salon that purportedly had no cost of goods sold and no expenses. The tax return listed two dependents, Baker's brother and sister, in order to claim the maximum refund amount possible using the EITC, \$2,867. Directory assistance had no record of a beauty salon by either the name (Agapee Beauty) or the address listed on the return.

29. On Wright's return Clark claimed business income of exactly \$14,500 – again, right in the EITC sweet spot – from a beauty salon that also reported no cost of goods sold and no expenses. The tax return listed two dependents, Wright's sister and son, in order to claim the maximum refund amount possible using the EITC, \$2,863. Again, directory assistance had no record of a beauty salon by either the name (Agape Beautoni Creations) or the address listed on the return.

30. Clark also fabricated Form W-2 information and claimed bogus estimated tax payments in order to obtain refunds for her customers.

31. For example, Clark prepared Felicia Chapman's 2006 tax return identifying her as the owner of a daycare company. On Chapman's individual tax return for 2006, Clark claimed that Felicia Chapman's business paid her \$25,000 in wages and that Chapman had \$5,240 withheld from her wages for federal income tax. However, no Form W-2 for Chapman for 2006 was ever reported to the Social Security Administration. This purported daycare company did not file employment tax returns in 2006, nor did it make federal employment tax deposits.

32. Similarly, Clark prepared a 2006 individual income tax return for Kenneth Wade that showed he was the owner and sole proprietor of a trucking company. On this tax return, Clark claimed that Wade made estimated tax payments totaling \$1,500. However, no estimated payments were made. By asserting this claim, Clark obtained a \$1,530 refund for Wade to which he was not entitled.

33. Clark's abuse of the Fuel Tax Credit as well as use of bogus information to fraudulently maximize her customer's Earned Income Tax Credit in order to obtain refunds for her customers illustrate Clark's complete disregard for the tax laws.

Harm to the public

34. Given the IRS's limited resources, identifying and recovering all revenues lost from Clark's preparation of false and fraudulent returns may be impossible.

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

owe. She has filed returns for customers seeking nearly \$750,000 in fraudulent fuel tax credits alone.

36. Clark's conduct harms the United States because her customers are receiving refunds to which they are not entitled.

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

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

Count I
Injunction under I.R.C. § 7407

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

40. Section 7407, I.R.C., authorizes a district court to enjoin an income tax preparer from:

- A. engaging in conduct subject to penalty under I.R.C. § 6694;
- B. engaging in conduct subject to penalty under I.R.C. § 6695(g);
- C. misrepresenting her experience or education as a tax return preparer; or
- D. 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 income tax return preparer.

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

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

43. Clark has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695(g) by failing to comply with the due diligence requirements imposed by internal revenue regulations regarding the determination of eligibility for, or the amount of, the earned income tax credit. As described above, many of the tax returns prepared by Clark fabricate and manipulate her customers' data in order to maximize their earned income tax credit.

44. Clark's continual and repeated violations of I.R.C. § 6695(g) fall within I.R.C. § 7407(b)(1)(A) and (D), and thus she is subject to an injunction under I.R.C. § 7407.

45. If she is not enjoined, Clark is likely to continue to file false and fraudulent tax returns.

46. Clark's continual and repeated conduct is subject to an injunction under I.R.C. § 7407 and her flagrant misuse of the fuel tax credit, as well as bogus EITC claims, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Clark's interference with the proper administration of the internal revenue laws. Thus, she should be permanently barred from acting as a return preparer.

Count II
Injunction under I.R.C. § 7408

47. The United States incorporates by reference the allegations in paragraphs 1 through 46.

48. Section 7408, I.R.C., 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.

49. Section 6701(a), I.R.C., 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.

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

51. If the Court does not enjoin Clark, 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)
Necessary to Enforce the Internal Revenue Laws

52. The United States incorporates by reference the allegations of paragraphs 1 through 51.

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

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

55. Unless enjoined, Clark is likely to continue to engage in such improper conduct. If Clark is not enjoined from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury because revenue losses caused by Clark will continue.

56. Enjoining Clark 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.

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

WHEREFORE, the United States prays for the following:

A. That the Court find that Shirley Clark 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 Shirley Clark has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695(g) 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;

C. That the Court find that Shirley Clark 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;

D. That the Court find that Shirley Clark 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);

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Shirley Clark, and all those in active concert or participation with her from:

1. acting as a federal income tax return preparer or assisting in, or directing the preparation or filing of federal tax returns or other related documents or forms for any person or entity other than herself, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
2. engaging in activity subject to penalty under I.R.C. § 6701, including advising with respect to, preparing, or assisting in the preparation of a documents related to a material matter under the internal revenue laws that includes a position she knows will result in an understatement of tax liability;

3. understating customers' liabilities or failing to comply with due diligence requirements as subject to penalty under I.R.C. §§ 6694 or 6695(g);
4. engaging in any other conduct or activity subject to penalty under any other penalty provision of the I.R.C.; and
5. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Shirley Clark, 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 federal tax returns or claims for a refund since January 1, 2004, to inform them of the Court's findings concerning the false or fraudulent attributes on those tax returns and enclose a copy of the permanent injunction against her;

G. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Shirley Clark to produce to counsel for the United States within fifteen 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 prepared federal tax returns or claims for refund since January 1, 2004;

H. That the Court retain jurisdiction over Shirley Clark and over this action to enforce any permanent injunction entered against Clark;

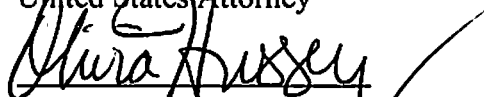
I. That the United States may conduct discovery to monitor Clark's compliance with the terms of any permanent injunction entered against her; and

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

DATED: February 20, 2009

Respectfully submitted,

A. BRIAN ALBRITTON
United States Attorney

A handwritten signature in black ink, appearing to read "Olivia R. Hussey", written over a horizontal line.

Olivia R. Hussey
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Tel.: (202) 616-1972
Fax: (202) 514-6770