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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. BRADLEY J. ELMER, CHRIS J. ELMER, JEFFREY DELANY, RYAN ELMER, MICHAEL BOEHRER, and ASSOCIATED TAX PLANNERS, INC., Defendants.	Case No. **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The United States of America, plaintiff, for its Complaint against Defendants Bradley J. Elmer, Chris J. Elmer, Jeffrey Delany, Ryan Elmer, Michael Boehrer (collectively, the "ATP Tax Preparers"), and Associated Tax Planners, Inc. ("ATP"), states as follows:

Nature of Action

1. The United States brings this complaint pursuant to 26 U.S.C. ("I.R.C.") §§ 7402, 7407 and 7408 to enjoin ATP and the ATP Tax Preparers, individually and doing business as "ATP,"or through any other entity, and any other person or persons in active concert or participation with them, from preparing or assisting in the preparation of federal tax returns for others, directly or

indirectly engaging in conduct subject to penalty under I.R.C. §§ 6694, 6700(a), and 6701, and from engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and I.R.C. §§ 7401, 7402(a) and 7407. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and I.R.C. § 7407(a) because the defendants reside in this judicial district.

Authorization

3. This action has been requested by a delegate of the Secretary of Treasury and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to I.R.C. §§ 7402, 7407 and 7408.

Defendants and Overview of Defendants' Activities

4. Chris J. Elmer is a resident of Roseville, California, and is the owner and president of ATP, as well as a tax return preparer at ATP.

5. Bradley J. Elmer is a resident of Lincoln, California. He is the son of co-defendant Chris J. Elmer and a tax return preparer at ATP.

6. Jeffrey Delany is a resident of Rocklin, California and the nephew of Chris Elmer. He started work at ATP in 2006 and prepared tax returns during the 2006 and 2007 filing seasons. Upon information and belief, Mr. Delany may have left the employment of ATP sometime in the past year.

7. Ryan Elmer is a resident of Folsom, California. He is the son of co-defendant Chris J. Elmer and a tax return preparer at ATP.

8. Michael Boehrer is a resident of Roseville, California. He is the son-in-law of co-defendant Chris J. Elmer and a tax return preparer at ATP.

9. ATP is a California corporation incorporated in 2006, with its principal place of business located at 1219 Pleasant Grove Blvd., Suite 120, Roseville, CA 95678. ATP was founded in 2003 by co-defendant Chris Elmer and was originally structured as a partnership. With the exception of Jeffrey Delany, all of the ATP Tax Preparers were ATP partners before ATP was incorporated.

10. The individual ATP Tax Preparers hold themselves out in their community as possessing skill and experience in tax return preparation. Indeed, the ATP website represents that customers who pay for tax preparation services at ATP will enjoy the benefit of "over 30 years of tax experience working at your side." (See http://www.associatedtaxplanners.com). The Defendants' customers are primarily from the Sacramento, California area, although some customers are also found in neighboring western U.S. states.

11. The Internal Revenue Service (the "IRS") has examined numerous returns prepared by the Defendants. In so doing, the IRS learned that the Defendants have engaged in a pattern of claiming false and inflated deductions on behalf of their customers.

12. In particular, the IRS investigation revealed that ATP and the ATP tax preparers have repeatedly urged their customers to create two-person sham partnerships - regardless of whether the customers had a business need for a partnership, let alone a business venture in need of organization. In many instances, ATP did not even bother to prepare or file a federal income tax return for the customer's new partnership.

13. As is described in greater detail below, ATP utilized the sham partnerships to claim large partnership losses on their customers' individual federal income tax returns. On close inspection, these partnership losses proved to have little or nothing to do with the purported partnership. Frequently, the claimed losses were comprised of personal expenses that ATP's customers could not have deducted in full had they been properly reported on a Form 1040 return, or were wholly non-

deductible. Through this practice, ATP greatly increased the magnitude of deductions on its customers' tax returns.

14. ATP and the ATP Tax Preparers have been open in telling customers and competitors alike that two-person partnerships provide an excellent means of reducing one's reported taxes through concealed improper deductions. This is primarily because the Defendants believed that the IRS was unlikely to investigate or audit the partnerships. To that end, the Defendants frequently did not bother to file a Form 1065 partnership return at all, even though the Form 1040s they prepared for their customers included Schedules K-1 or Schedules E that identified partnership losses. The defendants often went so far as to falsify Employee Identification Numbers ("EIN") for these illusory partnerships. Thus, secure in their belief that the IRS would not scrutinize their conduct, the Defendants have continually and repeatedly promoted use of sham partnerships as a vehicle for tax evasion, resulting in lost tax revenues that the IRS conservatively estimates to be in the millions of dollars.

15. Given the above, permanent injunctive relief barring the Defendants from the preparation of tax returns in the future is warranted.

IRS Investigation of ATP

16. In 2005, the IRS's Ogden, Utah Fraud Detection Center observed that an usually large number of individual Form 1040 tax returns prepared by ATP and/or the ATP Tax Preparers reported large partnership losses in excess of $10,000.

17. On closer examination, the IRS discovered that the partnerships at issue were all two-person partnerships - often the husband and wife joint filers. Moreover, many of the partnerships identified in the 1040 returns as having losses had not themselves filed a corresponding Form 1065 partnership income tax return.

18. Where a partnership return had been filed that correlated to a partnership loss claimed on a return, the IRS observed in most cases that the partnership reported little to no income, but

nevertheless claimed large deductions for repairs, rental expenses, interest, travel, and other purported business expenses. Such "expenses" frequently proved to simply constitute personal expenses of the individual taxpayers. Some of those expenses could have been reported as itemized deductions on the individual taxpayers' returns, but would then have been subject to limitations (such as under Adjusted Gross Income (AGI) restrictions (*e.g.,* I.R.C. § 67 for unreimbursed employee expenses)) or would have triggered liability for the Alternative Minimum Tax (the "AMT"). Most of the expenses were not deductible at all. In some cases, the Defendants included as partnership losses employee expenses for which the taxpayer was already being reimbursed by the taxpayer's employer.

19. The IRS found that 1,223 individual Form 1040 returns prepared by the Defendants for tax years 2005 and earlier included claims for losses stemming from two-person partnerships of $10,000 each, on average. The associated individual income tax returns identifying such partnership losses claimed $7.6 million in refunds. Given the thousands of returns prepared by the Defendants over the past several years, the total lost taxes attributable to their misconduct are likely much higher.

Specific Examples of Defendants' Fraudulent Tax Preparation Practices

20. The Defendants were blunt in disclosing to their customers the real reason for forming a partnership. For example, in 2003 Chris Elmer specifically informed two of his customers (Karyn and Bert Tilander) that a partnership was advisable from a tax standpoint because the IRS was not likely to audit or review a two-person partnership, which (as Chris Elmer specifically said to Mrs. Tilander) made it an excellent vehicle in which to "tuck" personal costs and expenses as purported business expenses of the partnership. Defendant Michael Boehrer made the same kind of statement in 2007 to a certified public accountant and tax preparer in the Sacramento region, Sue Hullen. One of Ms. Hullen's customers had asked her why she could not obtain the large refunds that ATP was getting for its customers, leading Hullen to speak with Boehrer after phoning ATP generally to find out the "secret" of its success in this regard.

21. Because Defendants' intent of claiming the existence of a partnership on a Form 1040 was to create a vehicle for claiming improper deductions, it did not matter to the Defendants whether ATP's customers actually <u>needed</u> a partnership as the structure for an existing or planned business venture. While some ATP customers were engaging in their own businesses and (at ATP's urging) opted to declare that their endeavors were a partnership, just as often ATP's customers had no prior business endeavor and no plans to start one. If an ATP customer had a nascent business concept or hobby that could be cast in the form of a partnership, he was urged by the Defendants to do so. For example, in 2007 Jeremy and Le Chau paid ATP to prepare their joint income tax return. When they informed Jeffrey Delany that they owned a residential property that they were attempting to rent out, they were told that their "business" should take the form of a partnership in their tax returns, and were then advised to cast numerous expenses as partnership expenses, no matter how tangentially related to the renting of the property. The Chaus took ATP's advice, only to have their 2006 income tax returns be audited. As a result of the audit, they were found to have additional tax liability in the amount of approximately $2,375 due to improperly claimed partnership losses.

22. Whether or not the ATP customer had any business that might be structured as a partnership, the Defendants always found enough bogus partnership expenses to report large partnership losses in the majority of the returns they prepared. Indeed, most of the partnerships identified in ATP customer individual income tax returns showed little income.

23. Little if anything was done by the Defendants to create the purported partnerships. The Defendants merely told their customers (many of whom were filing joint 1040 returns) that the existence of a partnership with their spouse would be reported on their income tax return. For single-filing customers, ATP recommended that the customer form the purported partnership with a relative or friend, but then direct100 percent of the losses to the ATP customer "partner."

24. Beyond that, the Defendants were cavalier about properly documenting the existence of the partnerships, and accordingly did not bother to ensure that their customers take the proper steps to form the partnerships. Many ATP customers who claimed the existence of a partnership in their

personal income tax returns had no written partnership agreement, and had never applied for the necessary state business licenses. Some ATP customers did not even file a separate partnership tax return; in such instances, ATP simply reported the bogus partnership losses on a Schedule E or Schedule K-1 attached to the customer's Form 1040, without also filing a Form 1065 partnership return. In the 2005 tax year, for example, ATP and the ATP Tax Preparers prepared 452 individual income tax returns (Forms 1040) where partnership or S-corporation losses were claimed but no corresponding partnership or S-Corporation return was filed. Only 34 of the ATP customers whose 2005 returns claimed such losses later filed the missing partnership return. With respect to the income tax returns for Mona and Jose Vergara for 2007, ATP reported partnership losses on their 1040 return without even informing them that ATP intended to do so.

25. Moreover, for most of the 452 cases mentioned above, the EIN for the alleged partnership, as set forth in the ATP customer's individual income tax return, was fictitious -- fabricated by the Defendants. An EIN for a business must be obtained from the IRS by submitting an application. All partnerships and other businesses are required to have one. Defendants employed a numbering system using the prefix "68" in creating such false EINs.

26. Once a customer's partnership was "created," the Defendants "tucked" a wide variety of business and personal expenses into the partnership and claimed the resulting partnership losses on the ATP customer's individual tax return (Form 1040). Frequently, the bogus losses were in fact attributable to personal expenses that the taxpayer had incurred. Some of the expenses frequently claimed on the partnership tax returns should have been reported as "miscellaneous itemized deductions" on the customer's individual income tax return (Form 1040). However, by claiming the expenses on the partnership return, limitations on itemized deductions (or triggering of the AMT) were avoided, and the expenses could be fraudulently deducted in full.

27. The types of expenses that ATP improperly included as phony partnership losses in the returns it prepared are myriad. For example, the Defendants informed their customers that they could deduct expenses related to their current employment, such as travel or meals, even if those expenses

had already been reimbursed by the customer's employer. Defendants told their customers they could classify vacation trips as partnership "annual meetings." In addition, income earned by customers through their day-to-day employment was in many cases improperly classified and claimed as partnership income.

28. Personal expenses only having a tangential relationship to the purported partnerships were also recast as deductions. For example, in 2005 Defendant Ryan Elmer informed Robin Drummond, a real estate agent and office manager, that she could deduct through the partnership all expenses relating to a boat she and her husband owned, including fuel and boat slip charges, merely because she occasionally used the boat to entertain potential new employees at her real estate office. The fact that the boat was used in connection with her personal employment, and not the business of the Drummond partnership, was ignored.

29. Similarly, Defendant Michael Boehrer told ATP customer Stephen Becker that he could deduct through the partnership "home office" costs, such as electrical bills or even the "rent" costs for the home office, based upon the presumption that any such costs were incurred by the partnership. The illusory partnership never actually paid rent to the individual taxpayers who were purportedly providing the home office space.

30. In addition, many of the returns prepared and filed by ATP for its customers claimed losses from residential rental properties. The losses from the rental properties would be properly classified on the filed partnership tax returns as "Passive Activity Losses." However, ATP would routinely reclassify such rental losses distributed from the partnerships as Non-Passive Losses on their customers' individual income tax returns. By doing so, the customer would, in effect, deduct 100 percent of losses that otherwise would be subject to Passive Activity Loss limitations under I.R.C. § 469. This misclassification was deliberate and knowing; in a majority of the partnership returns prepared by Defendants that reported rental losses, the ATP Tax Preparers manually overrode the tax preparation software they used in order to falsely depict the rental losses as non-passive activities and avoid the passive loss limitation.

31. As a result of the above conduct, numerous ATP customers have been audited and subsequently required to pay significant additional amounts of taxes and interest. Many of these ATP customers were surprised to learn that certain expenses had even been claimed as deductions in their returns (given that the Defendants did not review the returns in detail with their customers, instead merely informing them what their refund was likely to be).

32. In some instances, ATP and the ATP Tax Preparers went so far as to claim deductions against the direct instructions of their customers. For example, David Drummond expressly told ATP not to claim the dry cleaning of his police uniform as a business expense in his 2005 or 2006 tax returns, since he was aware that such costs were reimbursed by his employer. ATP did so in spite of his instructions. Because Mr. Drummond had not been given an opportunity to review the return before it was filed, he only learned of this after being audited by the IRS in 2008.

33. Given the above, ATP customers who have been audited by the IRS to date all have had remarkably similar experiences - in particular, discovering that they were liable for thousands of dollars in additional taxes. To give but a few of the many possible examples:

A. *Ricky and Barie Cheshire* - The Cheshires' income tax returns for 2005, 2006, and 2007 (prepared by Chris Elmer) were audited in 2008. They had claimed in their returns large partnership losses, despite the fact that no corresponding partnership income tax return had been filed; the partnership identified on their Form 1040 returns also had a fictitious EIN. The identified partnership losses turned out to be employee business expenses that should have been itemized on their individual Form 1040 income tax returns. The Cheshires were found to be liable for $14,216 in additional taxes for the three audited tax years.

B. *Bert and Karyn Tilander* - Chris Elmer prepared the Tilanders' income tax returns for the 2005 and 2006 tax years. They had an existing business in which they were attempting to raise sheep and goats on a parcel of rural land they owned. After being told by Mr. Elmer that a partnership structure would allow them to "tuck" deductions that otherwise might be limited or disallowed altogether, the Tilanders decided to form such a partnership and called it "Dog Pond," although they did little to establish the partnership as a formal legal entity. However, when the Tilanders' 2005 and 2006 income tax returns were audited in 2008, they learned that they owed $55,144 in additional taxes. Some of the deductions that Elmer had characterized as partnership losses but which were disallowed or limited included business travel expenses incurred by Mr. Tilander but reimbursed by his employer, as well as Mrs. Tilander's travel expenses incurred on those same trips (even though she was not traveling for any business purpose). The Tilanders were never given an opportunity to review these specific deductions at the time Chris Elmer prepared their income tax returns. As a result, they only learned in their audit that Chris Elmer had also included as a partnership loss deduction depreciation from an apartment unit that was part of the Tilanders' home. Elmer had also reported in the Tilander's tax returns passive activity losses relating to their purported efforts to lease the apartment on behalf of the "Dog Pond" partnership - something the Tilanders were not trying to do.

C. *Stephen and Vanessa Becker* - The IRS audited the Beckers' 2005 and 2006 income tax returns in 2008. In both of these years Michael Boehrer had prepared the Beckers' tax returns, although Chris Elmer had originally been their tax return preparer. The Beckers were found to owe $19,987 in additional taxes for the audited tax years. The partnership losses they had identified in their personal and partnership income tax returns and claimed as a deduction were completely disallowed. In particular, the IRS found in its audit that they were comprised of travel expenses that had been reimbursed by Mr. Becker's employer, personal expenses that should have been claimed as itemized deductions on the Beckers' individual Form 1040 tax return, and rental costs associated with the Becker partnership's "lease" of office space in the Becker's home - even though such costs were never paid directly by the Becker partnership to the Beckers individually (indeed, the partnership could not have done so - it did not possess a checking account with which to pay such expenses).

D. *Colin and Stephanie Mason* - Brad Elmer prepared the Masons' 2005 and 2006 income tax returns. Mrs. Mason worked for the "Cookie Lee" jewelry company, marketing and selling its jewelry on commission through her own personal efforts (at parties, fairs, to friends, etc.), while Mr. Mason worked as a deputy sheriff for Sacramento County. Without taking any of the steps necessary to form a legal partnership in California, the Masons "formed" a partnership at Brad Elmer's urging and began claiming large deductions in their tax returns related to the purported expenses of the partnership. The IRS audited the Masons' 2005 and 2006 tax returns in 2008 and determined that they owed $13,898 in additional taxes. As in the case of numerous other ATP Defendants' customers who were audited, the IRS disallowed personal expenses that had been claimed as partnership losses and reimbursed expenses incurred by Mr. Mason personally like the dry cleaning of his uniform. Mr. Mason had even been led to believe by Brad Elmer that he could properly deduct as a partnership expense the cost of a new weapon Mr. Mason had purchased, even though that cost had no relationship at all to the purported business of the Masons' partnership.

E. *Dave and Robin Drummond* - A 2008 IRS audit of the Drummonds' 2005 and 2006 personal and partnership income tax returns found that the Drummonds owed $30,267 in additional taxes. Ryan Elmer had been the Drummonds' tax preparer since 2005, and it was at his urging that the Drummonds created their partnership, "Drummond Entertainment," based on an existing internet business they had been attempting to get off the ground. In the audit, the IRS determined that one hundred percent of the claimed partnership losses should be disallowed. Mrs. Drummond's income as a real estate agent had been improperly assigned to the partnership as if it was its income, while certain legitimate expenses she had incurred through her work had been similarly assigned to the partnership, thereby allowing her to deduct a greater percent of the expenses. Other nondeductible expenses, such as maintenance and slip charges relating to the Drummonds' boat, had been improperly classified as deductible partnership expenses. And expenses for which Mr. Drummond was reimbursed by his employer (such as uniform cleaning or meals) were similarly included as partnership expenses. Notably, this last set of expenses were included in the Drummonds' tax returns despite Mr. Drummond's direct instruction to Ryan Elmer that they not be so classified.

F. *Jeremy and Le Chau* - Defendant Jeff Delany prepared the Chaus' income tax return for 2006. He had urged them to create a partnership around the single residence they owned in Austin, Texas and which they were attempting to rent out to tenants. However, when the IRS audited their 2006 tax return in 2008, the Chaus were found to be liable for $2,375 in additional taxes, due to the fact that they had lumped together a number of personal expenses as partnership losses.

G. *Jose and Mona Vergara* - The Vergaras had paid Chris Elmer to prepare their tax returns since 2004. Over that period of time, Mr. Vergara engaged in two entrepreneurial endeavors of his own - first a computer maintenance and repair business, and then a landscaping business. Although the Vergaras had informed Mr. Elmer about these business efforts, they never discussed forming a partnership around them, let alone reporting the existence of a partnership in their tax returns and/or paying ATP to file a partnership tax return for them. Indeed, Mrs. Vergara went to the trouble of actually filing the necessary forms and documents in the State of California so as to formally incorporate her husband's landscaping business - which was not structured as a partnership. But a 2008 IRS audit revealed that the Vergaras' income tax returns in fact claimed (specifically, on their Schedules E and K-1) the existence of a partnership - the "Jose Vergara Company" - which had purportedly incurred significant losses. No partnership return had been ever filed for this partnership, and it also was designated with a false EIN (using the "68" prefix typically employed by the ATP Defendants when creating EINs). The Vergaras learned as a result of the audit that they owed $15,452.63 in additional taxes, primarily because all of deductions based on reported partnership losses were disallowed (given that they could not be verified by a corresponding partnership income tax return).

Continual and Repeated Character of Defendants' Wrongful Conduct

34. The scope of Defendants' conduct is wide-ranging. The IRS conservatively estimates that in the past five tax years, ATP tax preparers completed over 14,000 individual tax returns. Since 2003, ATP reported to the IRS that it had prepared 6,375 business returns.

35. A large percentage of those returns have claimed partnership losses. For 2006 tax year returns filed in 2007, the IRS calculates that the ATP Tax Preparers collectively prepared and filed approximately 874 returns for two-person partnerships. 585 of those returns claimed losses, with most exceeding $10,000. This does not take into account purported partnership-related losses claimed on the many individual tax returns where no corresponding partnership return was filed.

36. Each of the individual ATP Defendants has himself prepared numerous income tax returns claiming bogus partnership losses. For the 2006 tax year, for example, Chris Elmer prepared 993 individual income tax returns. Of those, 123 of the individual returns he prepared reported collective partnership losses of approximately $3.8 million, but had no corresponding partnership return to corroborate those claims. Elmer further prepared 174 partnership returns for two-person partnerships for the 2007 tax year, with 106 of them reporting losses, 89 of which exceeded $10,000 (per return).

37. The same levels of consistent fraudulent conduct are also seen in the tax preparation activities of Chris Elmer's two sons, Ryan and Bradley. According to ATP customers lists obtained by the IRS, Ryan Elmer prepared 817 individual returns for the 2006 tax year, with 66 of them reporting partnerships alleged to have suffered losses (collectively totaling $1.3 million) but for which no corresponding partnership returns were ever filed. For 2007 tax year returns, Ryan Elmer prepared 242 returns in which a two-person partnership was identified; 178 of those returns claimed losses, with 125 claiming losses greater than $10,000 per return. Similarly, Bradley Elmer prepared 830 individual tax returns for the 2006 tax year, with 152 of the individual returns he prepared reporting partnership losses collectively exceeding $3 million, even though none of the partnerships filed partnership returns. Bradley Elmer prepared 234 returns for the 2007 tax year in which a two-person partnership was identified; 164 of those returns showed partnership losses, with the losses reported in 131 of those returns each exceeding $10,000.

38. The conduct of the remaining two individual ATP Defendants also reflects much the same pattern. 74 of the returns Mr. Boehrer prepared for tax year 2006 claimed losses from partnerships totaling $1.1 million, but none of those partnerships filed partnership returns of their own. For the 2007 tax year, over 50 percent of the two-person partnership Boehrer prepared showed losses. And 58 of the 2007 tax year individual returns prepared by Mr. Delany claimed two-person partnerships, with 42 of those returns showing losses, 28 of which exceeded $10,000 (per return).

39. This is not the first time that one of the Defendants has violated the Internal Revenue Code. In 2000, Defendant Chris Elmer (founder of ATP and the individual defendant with the most significant tax preparation experience) was penalized $10,000 for willful preparation of false tax returns for a taxpayer. Chris Elmer was specifically found to have understated one of his customer's business income on the customer's partnership and individual income tax returns - conduct very similar to that at issue in this case. Those penalties were upheld by the IRS on administrative appeal and paid by Mr. Elmer.

40. Moreover, it does not appear that the Defendants have meaningfully curtailed their improper conduct, even with increased IRS scrutiny of their activities in the past year. In reviewing returns prepared and filed by the Defendants in the recently-completed 2008 filing season, the IRS has observed fewer returns setting forth two-person partnerships - but just as many ATP-prepared returns are claiming false Schedule C business losses, inflated employee business expenses as itemized deductions, and/or losses from rental properties without proper consideration of the Passive Activity Loss limitations.

Harm to the Government

41. The tax-fraud schemes promoted and marketed by ATP and the ATP Tax Preparers harm the Government by fraudulently reducing their customers' reported tax liabilities.

42. The magnitude of lost tax revenues caused by Defendants' fraudulent conduct is large. To date, agreed tax deficiencies on 109 individual ATP-prepared returns audited by the IRS exceed $1 million, with the average deficiency per return exceeding $9,000. If the 6,375 business returns prepared by ATP since 2003 reflect the same average tax deficiency, the IRS projects the total tax loss to the Government could be nearly $60 million.

43. Putting aside the immense financial loss to the Government from such fraudulent practices, the IRS is also specifically harmed by such improper conduct because it must dedicate scarce resources to detecting and examining inaccurate returns filed by ATP's customers, and to attempting to determine and collect additional taxes.

44. Schemes such as those promoted and perpetrated by ATP and the ATP Tax Preparers contribute to the under-reporting of taxes, and have been specifically included by the IRS as part of its "Dirty Dozen" list of common tax scams the IRS seeks to eliminate. *See* IR200841 March 13, 2008 (http://www.irs.gov/newsroom/article/0,,id=180075,00.html).

45. The extensive involvement of ATP and the ATP Tax Preparers in these elaborate tax-fraud schemes over the past several years , the high number of returns prepared by them containing

improper deductions (along with the corresponding high amounts of unpaid taxes), and their persistence in claiming improper deductions even after becoming aware of increased IRS scrutiny of their conduct all establish that the misconduct described in this complaint or other similar misconduct is likely to recur unless the Defendants are permanently enjoined from preparing tax returns.

Count I: Injunction under I.R.C. § 7407 for violations of I.R.C. §§ 6694

46. The United States incorporates by reference the allegations contained in paragraphs 1 through 45.

47. I.R.C. Section 7407 authorizes a court to enjoin a person from, among other things,

> a. engaging in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who prepares or submits a return or claim that contains a frivolous or unrealistic position, or who willfully attempts to understate a customer's tax liability on a return or claim, or who makes an understatement on a return due to reckless or intentional disregard of rules or regulations;[1] and
>
> b. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

48. If the return preparer's misconduct is continual or repeated, and the court finds that a more narrow injunction (*i.e.*, prohibiting specifically enumerated conduct) would be insufficient to

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1. Section 6694 was amended by the Small Business and Work Opportunity Tax Act of 2007, P.L. 110-28, § 8246, effective for returns prepared after May 25, 2007. Section 6694(a), as amended, subjects a tax return preparer to penalty for understatements of taxpayer liability due to an "unreasonable position," defined as a position where "the tax return preparer knew (or reasonably should have known) of the position," there was no "reasonable belief that the position would more likely than not be sustained on its merits," and "the position was not disclosed as provided in section 6662(d)(2)(B)(ii)" or "there was no reasonable basis for the position." This suit focuses primarily on returns that Defendants prepared prior to May 25, 2007, and therefore the Government principally cites the penalty standards in effect for returns prepared on or before that date. The Government notes, however, that it also relies in lesser part on returns prepared by the Defendants in 2008, and that such conduct would be subject to penalty under the amended Section 6694(a) standards. Regardless, all of the conduct by Defendants in this respect would be subject to penalty under either the old or new standards.

prevent the preparer's interference with the proper administration of federal tax laws, the court may permanently enjoin the person from further acting as a return preparer.

49. The Defendants have continually and repeatedly prepared federal tax returns with inflated, exaggerated, and fictitious deductions based on sham two-person or family partnerships, and regardless of whether the partnership had engaged in any business activity during the relevant tax year. They have repeatedly and continually falsely characterized personal expenses as bogus partnership or other business losses so that the bogus losses would flow through to their customers' 1040 personal returns, thereby deducting non-deductible amounts or avoiding limitations on such deductions had they been properly claimed. They used the partnerships in this manner to hide the false or inflated deductions so as to avoid IRS scrutiny. They have falsely characterized their customers' rental income losses as non-passive losses in order to evade the restrictions on deducting passive activity losses. They have, accordingly, continually and repeatedly submitted returns or amended returns that assert frivolous or unrealistic positions, and thereby have engaged in conduct subject to penalty under I.R.C. § 6694.

50. In addition, the Defendants have continually and repeatedly claimed partnership losses on Schedule E's or Schedules K-1 attached to certain of their customers' Form 1040 income tax returns, despite the fact that there exists no corresponding Form 1065 partnership return. And they have placed fictitious EINs on these same Schedules K-1 and Schedules E attached to their customers' Form 1040s. This constitutes fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws under Section 7407(b)(1)(D).

51. Given the continual and repeated nature of the Defendants' violations of these various Internal Revenue Code provisions, and given the fact that they have committed such violations in complete disregard of the Internal Revenue Code, and have even continued to do so recently despite awareness that the Government was scrutinizing their conduct, a more narrow injunction would be inadequate to prevent future violations of the federal tax laws by Defendants. Permanent injunctive relief preventing the Defendants from preparing tax returns in the future is accordingly appropriate.

Count II: Injunction under I.R.C. § 7408 for violations of I.R.C. § 6700 and 6701

52. The United States incorporates by reference the allegations contained in paragraphs 1 through 48.

53. Section 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 from engaging in further such conduct or any other conduct subject to penalty under the Code.

54. Section 6700 imposes a civil penalty on any person who organizes or participates in the organization or sale of any plan or arrangement and who makes or furnishes or causes another person to make or furnish a statement with respect to the allowance of a tax deduction or credit or other tax benefit that the person knows or has reason to know is false or fraudulent.

55. Section 6701 imposes a civil penalty on any person who aids, assists in, procures or advises with respect to the preparation of any portion of a return, affidavit, claim or other document, when that person knows or has reason to believe that portion will be used in connection with a material matter arising under the federal tax law, and the person knows that the relevant portion will, if used, result in the material understatement of the liability for the tax of another person.

56. In this case, the Defendants actively urged their customers to "create" two-person or family partnerships as a mechanism for widespread tax evasion. They used the partnerships as vehicles for improper deductions that would be more difficult for the IRS to detect. By classifying personal expenses as partnership losses, the Defendants were able to realize higher deductions for their customers than would have been possible if the expenses had been reported correctly. And the Defendants knowingly marketed the use of partnerships based on their assumption that their customers were unlikely to be audited. As such, their conduct constitutes a violation of Section 6700(a).

57. In addition, Defendants prepared tax returns containing false statements of expenses and/or improperly classified personal expenses as partnership losses, for which they lacked

corroborative support or any other basis to include in the tax returns they prepared. This resulted in the filing of many false tax returns and the understatement of hundreds of thousands, if not millions, of dollars in taxes on their customers' returns.

58. Defendants engaged in the above-enumerated conduct with awareness that the inclusion of the false partnership losses in the returns they prepared were greatly understating their customers' tax liability. The Defendants repeatedly told customers and third parties alike that they would likely "get away with it" because of the low probability that the IRS would ever audit a two-person partnership. The primary ATP Tax Preparer and effective head of ATP, Chris Elmer, had prepared tax returns for many years, and previously was penalized for engaging in conduct very similar to that underlying this complaint.

59. The Defendants prepared tax returns, and/or assisted in the preparation of such returns, that were intended to be used, and were used, in connection with material matters arising under the federal tax laws. The Defendants knew or should have known that the returns they prepared would be used in such a manner.

60. Accordingly, the Defendants' conduct violates Section 6701.

61. Unless enjoined by this Court, the Defendants are likely to continue to help their customers misuse partnerships as a means of tax evasion, and/or to prepare tax returns containing false and fraudulent information and deductions and unrealistic positions, resulting in further understatements of their customers' tax liability.

Count III: Injunction under I.R.C. § 7402

62. The United States incorporates by reference the allegations contained in paragraphs 1 through 61.

63. Section 7402 authorizes courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

64. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

65. Defendants' conduct results in irreparable harm to the United States for which the United States has no adequate remedy at law. Defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

66. Unless Defendants are enjoined, the IRS will have to continue to devote substantial time and resources to identify and locate their customers, and then construct and examine those persons' tax returns and liabilities. The burden of pursuing individual customers may be extremely difficult given the IRS's limited resources.

67. If Defendants are not enjoined, they likely will continue to engage in conduct that obstructs and interferes with the enforcement of the internal revenue laws.

Relief Sought

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

A. That the Court find that the Defendants have engaged in conduct subject to penalty under I.R.C. §§ 6694, 6700(a), and 6701 and that injunctive relief is appropriate under I.R.C. §§ 7407 and 7408 to prevent the Defendants, and any business or entity through which they operate, and anyone acting in concert with them, from engaging in further such conduct;

B. That the Court find that the Defendants engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against the Defendants, and any business or entity through which they operate, and anyone acting in concert with them, is appropriate to prevent the recurrence of that conduct pursuant to the Court's powers under I.R.C. § 7402(a);

C. That the Court, pursuant to I.R.C. §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting the Defendants, individually and doing business as ATP or any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

(1) acting as federal tax return preparers, or requesting, assisting in, advising or directing the preparation or filing of federal tax returns for any person other than themselves, or appearing as a representative on behalf of any person or entity whose tax liability is under examination or investigation by the Internal Revenue Service or the Department of Justice;

(2) Engaging in any conduct subject to penalty under IRC § 6694;

(3) Instructing, assisting, or advising others with respect to the federal tax laws or other federal tax matters;

(4) Engaging in conduct subject to penalty under I.R.C. § 6700(a), *i.e.*, by organizing or participating in the organization of any plan or arrangement and making or furnishing or causing another person to make or furnish a statement with respect to the securing of a tax benefit that Defendants know or have reason to know is false or fraudulent;

(5) Engaging in conduct subject to penalty under I.R.C. § 6701, *i.e.*, by also aiding, assisting in, procuring, or advising with respect to the preparation of any portion of a return, affidavit, claim or other document, when the Defendants know or have reason to believe that portion will be used in connection with a material matter arising under the federal tax law, and the Defendants know that the relevant portion will result in the material understatement of the liability for the tax of another person;

(6) Engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws; and

(7) Engaging in any activity subject to penalty under any other section of the Internal Revenue Code.

D. That this Court, pursuant to I.R.C. § 7402, enter an injunction requiring the Defendants to contact by mail (or by e-mail, if a mailing address is unknown) all persons and entities who have, since January 1, 2003, previously paid or otherwise retained them to prepare their income tax returns, and inform those persons and entities of the Court's findings concerning the falsity of the Defendants' prior representations and attach a copy of the permanent injunction against them, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification signed under penalty of perjury stating that they have done so;

E. That this Court, pursuant to I.R.C. § 7402, enter an injunction requiring the Defendants to produce to counsel for the United States their complete customer list, including the names, addresses, e-mail addresses, telephone numbers, and social security or tax identification numbers, of all persons and entities who have, since January 1, 2003, previously paid or otherwise retained them to prepare their income tax returns, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification that they have done so;

F. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction;

G. That this Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment; and

H. That the Court grant the United States such other and further relief as the Court deems proper.

Dated: February 13, 2009

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