

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 07-489-MJR -CJP
	)	
MARY LEE POWELL, d/b/a	)	COMPLAINT FOR PERMANENT
MP ENTERPRISES or MLP	)	INJUNCTION AND OTHER
ENTERPRISES,	)	EQUITABLE RELIEF
	)	
Defendant.	)	

**COMPLAINT FOR PERMANENT INJUNCTION**

Plaintiff, United States of America, for its complaint against Mary Lee Powell states as follows:

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407 and 7408.
2. This suit is brought under §§ 7402, 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) to enjoin Powell, individually and doing business as MP Enterprises or MLP Enterprises, as follows:
  - (a) Preparing or filing, or assisting in the preparation or filing of any federal income tax return for any other person or entity;
  - (b) Engaging in any activity subject to penalty under I.R.C. §§ 6694, 6695, or 6701;
  - (c) Engaging in similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;
  - (d) Engaging in any other activity subject to penalty under the I.R.C.; and

(e) Representing persons before the Internal Revenue Service.

3. 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 the Attorney General of the United States, pursuant to Code §§ 7402, 7407, and 7408.
4. Powell resides in and does business in East Saint Louis, Illinois, within this judicial district. Powell does business at 323 N. 69<sup>th</sup> Street, East Saint Louis, Illinois 62203.

#### **Powell's Background**

5. Powell started preparing federal income tax returns for customers in 1976 while she was employed at H & R Block. She prepared returns at H & R Block for one year.
6. Since leaving H & R Block, Powell has prepared returns for others using the business names MP Enterprises or MLP Enterprises.
7. Powell last received tax training from H & R Block in 1997 but receives updates from the tax-preparation computer software company she uses.

#### **Powell's Business**

8. Powell has prepared at least 1,039 federal income tax returns from 2003 through 2006. As of December 15, 2006, Powell had prepared 274 Form 1040 tax returns for the 2006 processing year (2005 tax year).
9. Powell's customers are primarily wage-earners and small-business owners who rely on Powell's purported expertise on income tax matters.
10. Powell prepares returns from her home in East Saint Louis, Illinois.
11. Powell prepares returns that unlawfully understate her customers' tax liability by: fabricating or inflating deductions on Schedule A, "Itemized Deductions," Schedule C,

“Profit or Loss from Business,” and Schedule E, “Supplemental Income and Loss”; improperly claiming head-of-household filing status on separate returns for married couples; improperly claiming education tax credits or expenses; and improperly claiming dependents to generate larger Earned Income Tax Credits.

12. Powell encourages and assists her customers in applying for Refund Anticipation Loans (RALs), through HSBC Bank USA and HSBC Taxpayer Financial Services. The RALs are accelerated refunds from which Powell’s preparation fees, filing fees, refund account establishment fees, transmitter fees, document-preparation fees, and bank finance charges are automatically deducted.
13. Powell generates new business through word of mouth as she gains a reputation for being able to generate larger tax refunds than other preparers.
14. As a direct result of Powell’s fraudulent return preparation, her customers have filed federal income tax returns understating their federal income tax liabilities and claiming large income tax refunds to which they were not entitled.

#### **IRS’s Investigation**

15. The IRS has examined 109 returns that Powell prepared between 2004 and 2006. The examination revealed that all 109 returns understated the customer’s tax liability.
16. The average understatement on the examined returns was \$2,794.
17. Powell prepared the 109 examined returns for a total of 57 customers. Forty-six of those customers (representing 91 of the 109 returns examined) consented to the IRS adjustments. The agreed understatements totaled \$248,218 which was an average understatement of \$2,728 per return.

18. By December 2005, if not earlier, Powell knew that the IRS was investigating her return-preparation conduct. Nevertheless, Powell continued to prepare federal-income-tax returns that understated her customers' income tax liabilities by failing to report rental income disclosed by the customer, inflating or fabricating Schedule C business expenses including reporting false and unrealistic home-business expenses, inflating tuition and fees expenses, and inflating charitable cash contributions.
19. The estimated tax loss as a result of Powell's tax-preparation misconduct between 2003 and 2006 is \$2.9 million.
20. Powell willfully, intentionally, and recklessly understates her customers' income tax liabilities by preparing returns that improperly contained fabricated or inflated deductions on Schedules A and C, reported an incorrect filing status for her customers, improperly claims ineligible dependents to generate larger Earned Income Tax Credits, and improperly claims education credits and expenses.

**Inflated or Bogus Schedule A Employee Business Expenses**

21. Powell continually and repeatedly prepares federal income tax returns claiming inflated or bogus Schedule A employee business expenses to offset customers' Form W-2 wage income.
22. Powell prepared returns that claim inflated or bogus Schedule A unreimbursed employee business expenses for approximately 26 of the 57 customers whose returns the IRS examined.
23. For example, in preparing a 2003 return for an East St. Louis, Illinois, customer who works for the City of East St. Louis and the State of Illinois, Powell inflated employee

business expenses, including \$6,768 in vehicle expenses. The customer did not provide Powell with this figure or with any documentation to support this figure. After the IRS examined the customer's return, the customer agreed that the vehicle expenses should have been only \$1,823. This customer's 2004 return also reported inflated employee business expenses, including inflating vehicle expenses by approximately \$4,000.

24. In preparing a Fairview Heights, Illinois, customer's 2003 and 2004 returns, Powell reported inflated employee business expenses, including vehicle expenses, despite the fact that the customer provided Powell with a mileage log and documentation of the amounts the customer's employer reimbursed the customer.
25. In preparing another Fairview Heights, Illinois, customer's 2003 and 2004 returns, Powell improperly claimed deductions for reimbursed employee business expenses, including vehicle and travel expenses. The customer had informed Powell that the customer's employer reimbursed the customer for vehicle and travel expenses. After the IRS examined her returns, the customer agreed to disallowance of all \$13,927 of the reported unreimbursed employee business expenses on the customer's 2003 return and all \$12,617 of the reported unreimbursed employee business expense on the customer's 2004 return.

**Inflated or False Schedule C and Schedule E Expenses**

26. Powell repeatedly and continually prepares returns that report inflated or false expenses on Schedules C and E.
27. The IRS found that Powell prepared returns that claimed inflated or false Schedule C expenses for approximately 18 of the 57 customers whose returns the IRS examined, and prepared returns that either failed to report Schedule E income or inflated or claimed

bogus Schedule E expenses for approximately 6 of the 57 customers examined.

28. For example, in preparing a Belleville, Illinois customer's 2003 and 2004 federal income tax returns, Powell fabricated or inflated expenses, such as advertising expenses in the amount of \$250 and meals and entertainment expenses in the amount of \$10,950. This customer was a police officer with the St. Clair County Sheriff's department and worked part-time as a security officer. The customer never provided the preparer with information supporting the claimed expenses on his Schedule C. This customer consented to a disallowance of approximately \$20,000 of Schedule C expenses on both the customer's 2003 and 2004 returns.
29. One East St. Louis customer's 2003 and 2004 returns, which Powell prepared, reported inflated Schedule E expenses that were inconsistent with the information that the customer provided to Powell. For example, both the 2003 and 2004 returns fabricated \$250 in advertising expenses. This customer's 2003 and 2004 returns reported repairs expenses of \$3,988 and \$4,930, respectively, even though the information the customer provided to Powell indicated his repairs expenses for 2003 and 2004 were approximately \$555 per year. On this customer's 2005 return Powell knowingly omitted reporting rental income. Powell told the customer that the customer would have too much earned income if the rental income was reported.

#### **Returns Filed Claiming a False or Improper Filing Status**

30. Powell continually and repeatedly prepares and files returns that claim improper or false filing statuses that are inconsistent with the information customers provide to Powell. The most common example is preparing separate returns that claim head-of-household

filing status for married couples who are not entitled to that reporting status.

31. The IRS investigation determined that Powell prepared returns reporting an improper filing status for approximately 28 of the 57 customers whose returns the IRS examined.
32. For example, in preparing a Fairview Heights, Illinois couple's 2003 and 2004 returns, Powell filed separate returns for the couple for both years. For both years the wife's return improperly claimed head-of-household filing status, even though Powell knew the couple was married, the couple used the same address, the couple had previously filed joint-returns, and the couple had not advised her that they were living apart. After receiving notice of an audit, the couple contacted Powell. Powell advised the couple to not tell the IRS that they lived together the whole year. After an IRS examination, this couple consented to the IRS's proposed adjustments, including correcting their filing status to married filing jointly. The IRS examination determined that the couple's 2003 and 2004 returns understated their tax liability by \$3,232 and \$4,557, respectively; in part as a result of the couple improperly filing separate returns one of which claimed head-of-household filing status.

#### **Improper Tuition and Education Expenses and Credits**

33. Powell continually and repeatedly prepares and files returns that improperly claim tuition and education expense deductions and education credits.
34. The IRS determined after examination that Powell prepared returns for approximately 20 of the 57 customers that improperly reported tuition and fees deductions and/or improperly claimed education tax credits.
35. For example, on one East St. Louis customer's 2003 return, Powell inflated claimed

education expenses by over \$1,000 for courses the customer took in 2003 to generate a larger Hope Education Tax Credit. This customer consented to the IRS's adjustments.

36. On a St. Louis customer's 2003 return, Powell improperly claimed a Hope Education Tax Credit on the basis of expenses incurred on behalf of the customer's 13 year-old son who did not attend a post-secondary educational institution. Powell knew that this customer's son was only 13 years old. This customer consented to the IRS's adjustments correcting Powell's misrepresentations.
37. On another East St. Louis customer's 2004 return Powell claimed \$2,581 in tuition and fee deductions relating to the customer's son. The customer gave Powell a statement from the son's parochial school, not a post-secondary school, which was used as the basis for the expense deduction. Powell also claimed a child tax credit for the son, showing that Powell knew the son was under seventeen years of age. This customer consented to the IRS's adjustments correcting Powell's misrepresentations.

**Count I: Injunction Under §§ 7407 and 7408**

38. The United States incorporates by reference the allegations in paragraphs 1 through 37.
39. Code § 7407 authorizes the United States to seek an injunction against any tax preparer who has engaged in any "fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws," or who has "engaged in any conduct subject to penalty under section 6694 or 6695." Code § 7408 authorizes an injunction against anyone who has engaged in conduct subject to penalty under § 6701.
40. If a return preparer's misconduct is continual and/or repeated and the court finds that a narrower injunction (*i.e.*, prohibiting specific enumerated conduct) would not be



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

41. Section 6694 penalizes tax preparers who negligently prepare or submit a return or claim that contains a frivolous or unrealistic position, or who willfully attempt to understate a customer's tax liability on a return or claim, or who make an understatement on a return due to reckless or intentional disregard of rules or regulations.
42. Section 6695(g) penalizes tax preparers who fail to exercise due diligence in determining the eligibility of their customers for the Earned Income Tax Credit (EITC). The regulations penalize tax preparers who know or have reason to know that information they use in determining the eligibility for the EITC is incorrect. 26 C.F.R. § 1.6695-2(b)(3).
43. Powell has continually and repeatedly prepared and submitted federal tax returns that contain unrealistic and frivolous positions and has willfully attempted to understate customers' correct tax liabilities, and has thus engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6701.
44. Powell has continually and repeatedly failed to exercise due diligence in determining eligibility for the Earned Income Tax Credit (EITC) or the amount of an EITC, subjecting her to penalty under I.R.C. § 6695(g).
45. Powell has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.
46. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Powell is likely to continue to prepare false federal income tax returns and engage in

other misconduct of the type described in this complaint. Powell continued to engage in conduct subject to penalty under § 6694 and continued to engage in other fraudulent or deceptive conduct even after she was aware the IRS was investigating her tax preparation business.

47. Powell should be permanently enjoined under Code § 7407 from acting as an income tax return preparer because a more limited injunction would be insufficient to stop her interference with the proper administration of the tax laws. Powell should be enjoined under Code § 7408 from further engaging in conduct subject to penalty under Code § 6701.

**Count II: Injunction under I.R.C. § 7402 for Unlawful Interference  
with the Enforcement of the Internal Revenue Laws**

48. The United States incorporates by reference paragraphs 1 through 47.
49. Code § 7402(a) authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under this statute “are in addition to and not exclusive of any and all other penalties.” Code § 7402(a).
50. Powell, through the actions described above, has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to continue to engage in such conduct unless enjoined. The defendant’s conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate.
51. Unless Powell is enjoined, the IRS will have to devote substantial time and resources to

identify and locate her customers, and then examine her customers' tax returns and liabilities. Pursuing all individual customers may be impossible given the IRS's limited resources.

52. The Court should order injunctive relief under Code § 7402(a).

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

- A. That the Court find that Powell has engaged in repeated and continual conduct subject to penalty under I.R.C. §§ 6694, 6695, and 6701 and that injunctive relief is appropriate under I.R.C. §§ 7407 and 7408 to bar Powell from acting as an income-tax-return preparer and from engaging in conduct subject to penalty under I.R.C. § 6701;
- B. That the Court find that Powell has engaged in conduct that interferes with the enforcement of the internal revenue laws and substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief against her is appropriate to prevent the recurrence of that conduct pursuant to I.R.C. §§ 7407 and 7402(a);
- C. That the Court, under I.R.C. §§ 7402 and 7407, enter a permanent injunction permanently barring Powell from acting as a federal-income-tax-return preparer and from preparing or filing federal tax returns for other, and from representing customers before the IRS;
- D. That the Court, under I.R.C. §§ 7402 and 7407, enter a permanent injunction prohibiting Powell and her representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with her,

from directly or indirectly;

- (1) engaging in any conduct subject to penalty under I.R.C. § 6694, including preparing any part of a return or claim for refund that includes an unrealistic or a willful understatement of tax;
- (2) engaging in any conduct subject to penalty under I.R.C. § 6695(g), including failing to be diligent in determining eligibility for the Earned Income Tax Credit;
- (3) acting as a federal-income-tax-return preparer;
- (4) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and

- E. That the Court, under I.R.C. § 7402, enter an injunction requiring Powell to contact all persons and entities for whom she prepared any federal-income-tax returns or other tax-related documents after January 1, 2003, and inform those persons of the entry of the Court's findings concerning the falsity of representations Powell made on her customers' tax returns, and that a permanent injunction has been entered against her;
- F. That the Court, under I.R.C. § 7402, enter an injunction requiring Powell to turn over to counsel for the United States a list of the names, addresses, e-mail addresses, phone numbers, and Social Security numbers of all individuals or entities for whom Powell prepared or helped to prepare any tax-related documents, including claims for refund or tax returns since January 1, 2003;

- G. That the Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and
- H. That this Court grant the United States such other relief, including costs, as is just and equitable.

Respectfully submitted,

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