

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Case Number: 07-472

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ANTHONY L. GREEN, and NICOLE A.)
 BAINE, individually and doing business as)
 TAS SERVICES,)
)
 Defendants.)
_____)

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America alleges against defendants Anthony L. Green and Nicole A. Baine, individually and doing business as TAS Services, as follows:

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 (IRC) (26 U.S.C.) §§ 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 Green and Baine individually and doing business through TAS Services or any

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other entity, and their representatives, agents, servants, employees, and attorneys, and anyone in active concert or participation with them, from directly or indirectly:

- A. acting as federal income tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- B. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents or forms for others;
- C. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to understate their federal tax liabilities or evade the assessment or collection of their correct federal tax;
- D. understating customers' liabilities as subject to penalty under IRC § 6694;
- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, 6701, or any other penalty provision of the IRC; and
- F. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Green and Baine reside in Durham, North Carolina, within this judicial district and a substantial part of the actions giving rise to this suit took place in this district.

Defendants and Basic Facts

5. Anthony L. Green and Nicole A. Baine are paid unenrolled federal tax preparers operating in Durham County, North Carolina.

6. Green and Baine are federal income tax return preparers engaged in the unlawful promotion of a tax scheme in which they give customers false and fraudulent tax advice regarding the fuel tax credit and prepare fraudulent tax returns for customers to implement the scheme.

7. Green and Baine prepare tax returns through the business TAS Services, located at 1209 Orchard Way, Durham, North Carolina, which is wholly owned by Antony L. Green.

8. Defendants' customers leave their tax information with TAS Services and return later to retrieve the completed tax returns. Defendants' customers do not know what individual actually prepared their federal income tax return, because a significant number of federal income tax returns prepared by TAS Services do not identify the return preparer. Failing to identify the return preparer on a federal tax return is a violation of IRC §§ 6109(a)(4) and is subject to penalty under IRC § 6695.

9. Many federal tax returns prepared by TAS Services only identify TAS Services as the return preparer and improperly fail to identify the actual individual who prepared the federal tax return.

10. TAS Services prepares customers' federal income tax returns improperly claiming fraudulent IRC § 6427 fuel tax credits.

11. The IRS has identified at least 84 federal tax returns prepared by TAS Services for customers that claim bogus fuel tax credits. Twenty of these returns identified Green as the return preparer and six identified Baine as the return preparer.

12. The IRS has identified more than \$150,000 in fraudulent fuel tax credits claimed on returns prepared by TAS Services.

Fuel tax credit Fraud

13. Green and Baine have prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms Green and Baine misapplied IRC § 6427 ("Fuel tax credit"). The fuel tax credit is a credit available only to taxpayers who operate farm equipment or other off-highway vehicles for business use. Moreover, the equipment or vehicles must not be registered for highway uses.

Overview of IRC § 6427: Credit for Federal Tax Paid on Undyed Diesel Fuel

14. Fraudulently claiming entitlement to the fuel tax credit is a widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, defendants improperly claim the fuel tax credit for customers for purported personal or business motor fuel purchases.

15. Section 4081 imposes a federal excise tax on the sales of undyed diesel fuel. An ultimate purchaser of undyed diesel fuel used in an off-highway business qualifies for a credit under IRC § 6427.

16. 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>).

17. IRS Publication 510 notes that a highway vehicle is 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>).

18. In addition, IRS Publication 510 provides the following example of an appropriate application of the fuel tax credit for off-highway business use:

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.

19. 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

20. Defendants prepare federal income tax returns for individuals who are part or full-time wage earners, and improperly reduces the customers’ reported tax liabilities by claiming a bogus fuel tax credit under IRC § 6427.

21. Defendants prepare Forms 4136 for their customers falsely stating that the customer has used diesel fuel for off-highway business purposes. TAS Services claimed the fuel tax credit

under § 6427 for city residents in such purported occupations as gospel singer, painter, and bail bondsman.

22. Defendants claimed absurdly large bogus credits by falsely reporting purchases of huge quantities of diesel fuel.

23. For example, defendant Green fraudulently prepared a return with a reported fuel tax credit for a customer claiming to be a gospel singer. The return Green prepared for this customer claimed that in 2005 the customer purchased 6,214 gallons of undyed diesel fuel for off-highway business use. The purported gospel singer's total reported income for the year was \$2,341. Assuming a price per gallon of \$2.00, the gospel singer would have to have spent approximately \$12,248 to purchase that volume of undyed diesel fuel—over five times his reported total income for the year. Moreover, to use that volume of diesel fuel, assuming mileage of 20 miles per gallon, the purported gospel singer would have to have driven 124,280 off-highway business miles during the year—which comes to 340 miles each day of the year, seven days a week. This example shows the blatantly fraudulent nature of defendants' use of the fuel tax credit.

24. The following chart shows more examples of defendants' fraudulent preparation of 2005 federal income tax returns claiming the fuel tax credit:

Purported business or profession	Amount of off-highway business use of undyed diesel fuel claimed on Form 4136	Cost of claimed business use of undyed diesel fuel *	Estimated yearly/daily mileage**	Total Income	Amount of fuel credit
Supervisor	3,842 gallons	\$7,684	76,840 per year /210 per day	\$80	\$937
Supervisor	5,619 gallons	\$11,238	112,380 per year /307 per day	\$4,774	\$1,371
Household repairman	6,149 gallons	\$12,298	122,960 per year/336 per day	\$13,935	\$1,500
Stock person	4,157 gallons	\$8,314	8,3140 per year/228 per day	\$21,333	\$1,014

* Estimated total cost based on \$2.20 per gallon.

** Estimated milage based on 20 miles per gallon.

Other enjoiable conduct

25. Defendants' fraudulent federal tax return preparation is not limited to preparing returns with bogus fuel tax credits. Defendants also claim false head-of-household filing statuses and Hope credits on customers' returns.

26. Defendants also prepare federal income tax returns for customers that claim false Schedule A and C deductions.

27. Defendants claimed head-of-household filing status on one customer's return, even though he was married and defendants knew that. Married people may not claim head-of-household status. Defendants also claimed an education credit on this customer's return, although the customer had not advised defendants that anyone in his household qualified for an education credit.

28. Defendants have also claimed deductions for purported expenses on several other customers' Schedule C forms, even though the customers did not tell defendants they had incurred any such expenses.

29. The following are examples of Schedule C expenses that defendants improperly claimed, and which their customers have stated were false and were fabricated by defendants:

Legal and Professional Services	\$5,816
Utilities	\$1,440
Car and Truck expenses	\$20,955
Advertising	\$798
Legal and Professional Services	\$4,000
Rent or Lease of Vehicles	\$9,492
Cost of goods sold	\$11,393
Supplies	\$5,204
Donations	\$6,000

30. Defendants have also claimed false deductions on their customers' Schedule A forms.

Green's Prior Criminal Conviction for Preparing Fraudulent State Tax Returns

31. On September 14, 1994, Green pled guilty to fourteen counts of aiding and assisting in the preparation of fraudulent North Carolina state income tax returns. He was sentenced to fourteen years in prison.

32. Green misrepresented his prior criminal record to the IRS in his application for an electronic filing number, indicating falsely that he had never been convicted of a crime.

Harm to the public

33. Defendants' 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. Defendants have filed returns for customers seeking more than \$100,000 in refunds based on fraudulent fuel tax credits.

34. In addition to the direct harm caused to the United States by defendants preparing tax returns that understate their customers' tax liabilities, defendants' activities undermine public confidence in the administration of the federal tax system and encourage violations of the internal revenue laws.

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

36. The IRS sent defendants letters on May 4, 2007, requiring, under the authority of IRC § 6107(b), that Green provide copies of all of the federal income tax returns he prepared on

or after December 31, 2006, and that Baine provide copies of all federal income tax returns she prepared on or after December 31, 2001. Defendants have failed to respond to the letter. Their failure to respond is conduct subject to penalty under IRC § 6695(d) and therefore subject to injunction under IRC § 7407.

Count I
Injunction under IRC § 7407

37. The United States incorporates by reference the allegations in paragraphs 1 through 36.

38. IRC § 7407 authorizes a district court to enjoin an income tax 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 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.

39. Defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by preparing federal income tax returns that understate their customers' tax liabilities based on unrealistic, frivolous, and fraudulent positions.

40. Green and Baine's continual and repeated violations of IRC § 6694 fall within IRC § 7407(b)(1)(A) and (D), and thus are subject to an injunction under IRC § 7407.

41. In addition, Green and Baine have failed to comply with an IRS request under IRC § 6107(b), which failure is subject to penalty under IRC § 6695 and thus subject to injunction under IRC § 7407.

42. Defendants further have continually and repeatedly engaged in conduct subject to penalty under IRC § 6695 by failing to identify themselves on returns they prepare.

43. If they are not enjoined from preparing tax returns for others, defendants are likely to continue to prepare or assist in preparing false and fraudulent tax returns, and to fail to turn over customer information as required by IRC § 6107(b).

44. Defendants' continual and repeated conduct subject to an injunction under IRC § 7407, including their failure to respond to an IRS request under IRC § 6107(b), their continual and repeated false claiming of credits and deductions, and their flagrant misuse of the fuel tax credit demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Green and Baine's interference with the proper administration of the internal revenue laws. Thus, they should be permanently barred from acting as return preparers.

Count II
Injunction under IRC § 7408

45. The United States incorporates by reference the allegations in paragraphs 1 through 44.

46. IRC § 7408(a)-(c) 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.

47. IRC § 6701(a) 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.

48. Defendants prepare federal tax returns for customers that they know will understate their correct tax liabilities. Defendants' conduct is thus subject to penalty under IRC § 6701.

49. If the Court does not enjoin defendants, they are likely to continue to engage 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

50. The United States incorporates by reference the allegations of paragraphs 1 through 49.

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

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

53. Unless enjoined, Defendants are likely to continue to engage in such 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.

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

55. 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 defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 and have 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 defendants have engaged in conduct subject to a penalty under IRC § 6701, and that injunctive relief under IRC § 7408 is appropriate to prevent recurrence of that conduct;

C. That the Court find that defendants have engaged in conduct subject to penalty under IRC § 6695(d);

D. That the Court find that defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent recurrence of that conduct pursuant to the Court's inherent equity powers and IRC § 7402(a);

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting defendants, and anyone in active concert or participation with them from:

1. acting as federal income tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
2. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
3. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to understate their federal tax liabilities or evade the assessment or collection of their correct federal tax;
4. understating customers' liabilities as subject to penalty under IRC § 6694;
5. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, 6701, or any other penalty provision of the IRC; and
6. engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring defendants within fifteen days to 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 in the past five years to inform them of the Court's findings concerning the falsity of Green and Baine's prior representations and tax returns prepared, and enclose a copy of the permanent injunction against them;

G. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring defendants 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 they prepared federal tax returns or claims for a refund since January 1, 2003;

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

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

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

DATED: June 19, 2007

Respectfully submitted,

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