

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. 1:07cv0885-W-DW
)
 SHARON HUBBARD,)
)
 Defendant.)
 _____)

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, states as follows for its complaint against defendant Sharon Hubbard:

Nature of the Action

1. This is a civil action brought by the United States to permanently enjoin Defendant Hubbard from preparing federal income tax returns for others, representing customers before the IRS, advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return, and promoting tax-fraud schemes.

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

Jurisdiction

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7401, 7402(a), 7407, and 7408.

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4. Prior to her incarceration, Hubbard resided within this judicial district in Kansas City, Missouri. This Court may properly exercise jurisdiction over Hubbard because she was conducting business within this judicial district by filing the tax returns described below with the IRS in Kansas City, Missouri.

5. Currently, Hubbard is incarcerated with the Bureau of Prisons Pekin Facility, located at 2600 South Second Street, Pekin, Illinois 61555.

Defendant

6. Hubbard, an un-enrolled tax return preparer, began preparing taxes approximately twenty years ago. She began this work sometime after terminating her employment with the Internal Revenue Service in March, 1971, where she was employed as a clerk.

7. Since at least 1999 tax preparation has been Hubbard's primary source of income.

8. In September 2006, Hubbard entered a pre-indictment plea to one count of aiding and assisting in the preparation and filing of a fraudulent tax return, in violation of 26 U.S.C. § 7206(2). Hubbard was sentenced on January 4, 2007 to twenty-four months incarceration, one year of supervised release, and a \$100 special assessment. As a special condition of Hubbard's supervised release, Hubbard "shall not further engage in the business of preparing tax returns." After this term of supervised release expires, however, Hubbard will be free to resume tax preparation work unless permanently enjoined.

Overview of Defendant's Activities

9. During 2002 and 2003, Hubbard was a self-employed tax-return preparer who operated her return-preparation business under the name Hubbard Tax Service. During that time,

Hubbard prepared and filed federal income tax returns and amended tax returns for customers for tax years 1999, 2000, 2001, and 2002.

10. These tax returns contained material false and fraudulent claims of deductions and expenses, including fictitious and/or inflated Schedules A (such as charitable contributions, job-related expenses, and medical expenses) and Schedule C deductions (such as, advertising, car and truck expenses, office expenses, computer software, business phone expenses, thank you gifts, and travel), which resulted in fraudulently understated tax liabilities on her customers' returns.

11. On many of the tax returns Hubbard prepared and filed, for tax year 2002, Hubbard did not list her own Social Security number as the tax return preparer; instead, she fraudulently used the stamped signature and Social Security number of her sister Theresa Carlton. The IRS has determined that Hubbard used Theresa Carlton's signature and Social Security number on 684 individual 2002 tax returns. Hubbard prepared and filed a total of 2,553 individual 2002 federal income tax returns.

12. These tax returns and amended tax returns were prepared by Hubbard and filed with the IRS in Kansas City, Missouri.

Specific Scheme to Inflate Deductions

13. Hubbard knew that the tax returns she prepared contained false information that resulted in tax understatements and that her customers were not entitled to these deductions. Hubbard told her customers that receipts were not necessary and that as long as their deductions were within a normal range they would not trigger an IRS audit.

14. Hubbard prepared 2,553 individual income tax returns for tax years 2001 through 2004. The IRS completed audits of 58 of Hubbard's customers for tax years 2001 through 2004. Hubbard claimed inflated deductions on 100% of those returns.

15. The customers the IRS interviewed during the audits indicated that they did not discuss the tax returns with Hubbard at any time. Often the customers did not know how or why she created the deductions and they had no documentation to support the deductions.

16. As a part of a criminal investigation of Hubbard, two IRS undercover agents posed as customers (hereinafter, "Agent A" and "Agent B"). Hubbard prepared tax returns for Agents A and B for tax year 2002. The completed returns each contained deductions far in excess of the amount supported by receipts the agents provided to Hubbard. The total amount in fraudulent deductions on Agent A's tax return equaled \$14,743 and on Agent B's tax return equaled \$12,340.

17. Hubbard was put on notice prior to the 2004 filing season that her returns were under IRS scrutiny, but this notice did not deter Hubbard from continuing to file falsified tax returns for the 2004 tax year.

Harm to the United States

18. Hubbard's preparation of false and fraudulent returns, to the extent that the IRS does not detect and correct them, has resulted in customers significantly under-reporting and underpaying their taxes.

19. Hubbard harms the United States because her customers are not reporting and paying their correct tax liabilities.

20. The IRS has issued erroneous refunds based on fraudulent returns Hubbard prepared and has then had to audit Hubbard's customers and take collection action to attempt to recoup the money.

21. The Government has spent considerable time and resources auditing returns prepared by Hubbard and collecting the taxes owed and erroneous refunds paid. For each customer's return for each tax year, the IRS must spend time and resources to determine the correct tax liabilities, or request that they file correct amended returns.

22. As discussed above, Hubbard prepared 2,553 individual income tax returns for tax years 2001 through 2004. Of those returns, an estimated 1,729 contained Schedule A deductions. According to the IRS, the estimated tax loss amounts to \$2,536 per Schedule A tax return. Extrapolating from this figure, the total estimated tax loss to the United States caused by Hubbard for the four-year period ending with 2004, equals over \$4,000,000.

23. The estimated harm to the United States from Hubbard's misconduct with respect to all customers is undoubtedly much greater. This sum does not include the substantial cost to the government of investigating and correcting the fraud.

24. Hubbard has also harmed her customers because they paid Hubbard to prepare these fraudulent returns, and, after the fraud is detected, are responsible for paying the correct amount of all taxes, along with interest and possibly penalties.

**Count I:
Injunction under I.R.C. § 7408 for Violation of I.R.C. § 6701**

25. The United States incorporates by reference the allegations in paragraphs 1 through 24.

26. Section 7408, I.R.C., authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under I.R.C. § 6701 if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

27. Section 6701, I.R.C., penalizes any person (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document; (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

28. Hubbard prepares or assists in the preparation of federal income tax returns for her customers.

29. Hubbard knows or has reason to believe that these income tax returns will be filed with the IRS and thus will be used in connection with a material matter arising under the internal revenue laws.

30. Hubbard knows that the federal tax returns she prepares will result in understatements of other persons' tax liabilities.

31. If Hubbard is not enjoined, she is likely to continue to engage in conduct which violates § 6701 once released from incarceration and no longer under the supervision of federal district court.

**Count II:
Injunction under I.R.C. § 7407 for Violation of I.R.C. §§ 6694 and 6695**

32. The United States incorporates by reference the allegations in paragraphs 1

through 31.

33. Section 7407, I.R.C., authorizes a court to issue an injunction if an income tax return preparer engages in conduct subject to penalty under I.R.C. §§ 6694 or 6695.

34. Section 6694(a), I.R.C., penalizes a tax return preparer if (1) the preparer prepares a return or claim for refund that includes an understatement of liability due to a position for which there is not a realistic possibility of being sustained on the merits; (2) the preparer knew (or reasonably should have known) of such position; and (3) the position was not disclosed in accordance with I.R.C. § 6662(d)(2)(B)(ii) or was frivolous.

35. Section 6694(b), I.R.C., penalizes a tax return preparer who prepares a return or claim with an understatement of liability (1) in a willful attempt to understate the liability or (2) with a reckless and intentional disregard of rules or regulations.

36. Section 6695(b), I.R.C., penalizes a tax return preparer if the preparer fails to sign returns as required by law.

37. Hubbard's conduct as described above is subject to penalty under §§ 6694(a), 6694(b), and 6695(b).

38. Hubbard has prepared income tax returns that include understatements of her customers' liability which had no realistic possibility of being sustained on the merits; Hubbard knew or reasonably should have known about these understatements; Hubbard did not disclose them in accordance with IRC § 6662(d)(2)(B)(ii); and such understatements are frivolous. Hubbard has thus engaged in conduct subject to penalty under § 6694(a).

39. Hubbard prepares returns for customers with false entries in a willful attempt to

understate the customers' liability or with a reckless and intentional disregard of rules and regulations. Hubbard has thus engaged in conduct subject to penalty under § 6694(b).

40. Hubbard is subject to penalty under § 6695(b) for failing to sign the returns she prepared while acting as a tax return preparer. Hubbard utilized her sister's signature and Social Security number on at least 684 individual tax returns. Hubbard misrepresented the identity of the actual tax return preparer in an attempt to avoid detection and investigation by the IRS.

41. Hubbard's failure was knowing and intentional, or with willful neglect, and was not supported by any reasonable basis.

42. Hubbard has continually and repeatedly engaged in conduct that violates §§ 6694 and 6695. An injunction merely prohibiting Hubbard from engaging in conduct subject to penalty under §§ 6694 and 6695 would not be sufficient to prevent her interference with the proper administration of the tax laws. Accordingly, Hubbard should be permanently enjoined from acting as an income tax return preparer.

**Count III:
Injunction under I.R.C. § 7402(a) for Unlawful Interference
with Enforcement of the Internal Revenue Laws
and Appropriateness of Injunctive Relief**

43. The United States incorporates by reference the allegations in paragraphs 1 through 42.

44. Section 7402(a), I.R.C., authorizes a court to issue orders of injunction as may be necessary or appropriate to enforce the internal revenue laws.

45. Section 7402(a), I.R.C., expressly provides that its injunction remedy is "in addition to and not exclusive of" other remedies for enforcing the internal revenue laws.

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

47. Hubbard's conduct has caused irreparable harm to the United States and to her customers.

48. Hubbard has caused and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

49. Unless permanently enjoined, Hubbard is likely to return to her fraudulent tax preparation conduct after release from incarceration and court supervision. Since at least 1999, tax preparation has been her primary source of income. Further, Hubbard was put on notice prior to the 2004 filing period that her returns were under IRS scrutiny and this notice did not deter Hubbard from continuing to falsify tax returns.

50. The United States will suffer irreparable injury if Hubbard is not enjoined. This outweighs the harm to Hubbard from being enjoined from return-preparation and violating tax laws.

51. The public interest would be advanced by enjoining Hubbard because an injunction will prevent recurrence of her illegal conduct and the harm that conduct is causing to the United States Treasury.

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

A. That the Court find that Hubbard has engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

B. That the Court find that Hubbard has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694, and that, pursuant to I.R.C. § 7407, an injunction prohibiting such conduct would not be sufficient to prevent Hubbard's interference with the proper administration of the tax laws and that Hubbard should be enjoined from acting as an income tax return preparer;

C. That the Court find that Hubbard has interfered with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers;

D. That this Court, pursuant to I.R.C. § 7408, enter a permanent injunction prohibiting Hubbard, individually and doing business under the various names listed in this complaint or under any other name or using any other entity, and her representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with her, from directly or indirectly:

1. Engaging in activity subject to penalty under I.R.C. § 6701, including aiding or assisting in, procuring, or advising with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; knowing (or having reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and knowing that such portion (if so used) would result in an understatement of the liability for tax of another person; and
2. Engaging in any other activity subject to penalty under I.R.C. § 6701 or any other provisions of the Internal Revenue Code.

E. That this Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting Hubbard, individually and doing business as Hubbard Tax Service or under any other name or using any other entity, and her representatives, agents, servants, employees, attorneys, and all

persons in active concert or participation with her, from directly or indirectly acting as a federal income tax return preparer;

F. That this Court, pursuant to I.R.C. § 7402(a), enter a permanent injunction prohibiting Hubbard, individually and doing business under the various names listed in this complaint or under any other name or using any other entity, and her representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with her, from directly or indirectly:

1. Preparing or assisting in the preparation of any federal tax return for anyone other than herself;
2. Advising, counseling, or instructing anyone about the preparation of a federal tax return;
3. Owning, managing, controlling, working for, or volunteering for a tax-return-preparation business;
4. Representing customers in connection with any matter before the IRS; and
5. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws.

G. That this Court, pursuant to I.R.C. § 7402(a), require Hubbard at her own expense to contact by mail all customers for whom she has prepared federal tax returns or assisted in preparing tax returns, and send them a copy of this Complaint and the permanent injunction order, and to certify to the Court within eleven days of entry of the permanent injunction that she has complied with this provision;

H. That this Court require Hubbard to provide the United States with a list of everyone for whom she has prepared (or helped to prepare) a federal tax return and a list of all of her customers, specifying names, addresses, e-mail addresses, telephone numbers, and social security

numbers.

I. That this Court permit the United States to conduct post-judgment discovery to ensure Hubbard's compliance with the permanent injunction; and

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

Respectfully submitted,

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/s/

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