

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
DONNA L. HAMILTON, individually and)	
d/b/a East Coast Accounting,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR PERMANENT INJUNCTION

This is a civil action brought by the United States to permanently enjoin defendant Donna L. Hamilton, individually and d/b/a East Coast Accounting, from preparing federal income tax returns, amended federal income tax returns and other related documents and forms for others, and/or advising, assisting, counseling, or instructing anyone about the preparation of a federal tax return, engaging in any activity subject to penalty under 26 U.S.C. § § 6694, 6695, or 6701, promoting tax-fraud schemes or other plans or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of federal income taxes, engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws, or representing customers before the Internal Revenue Service (“IRS”), and/or representing customers before the Internal Revenue Service (“IRS”).

Jurisdiction

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 26 U.S.C. §§ 7401, 7402(a), 7407, and 7408.

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7401, 7402(a), 7407, and 7408.

3. Ms. Hamilton resides in and operates a business, East Coast Accounting, in Sagadahoc County, Maine, within the jurisdiction of this Court.

Facts Common to All Counts

4. Ms. Hamilton prepares or assists in the preparation of individual federal income tax returns for other people for compensation.

5. Ms. Hamilton operates a business that provides tax return preparation services under the name East Coast Accounting from her mother's residence in Topsham, Maine. Ms. Hamilton, a high school graduate, learned how to prepare tax returns from her mother, Carol East Palesky. Ms. Hamilton allegedly purchased her tax preparation business from her mother, Ms. Palesky.

6. Ms. Palesky operated a business that provided tax return preparation and other accounting services under the name East Accounting Associates. In August 2006, Ms. Palesky was sentenced to serve sixteen months in prison after pleading guilty to one count of theft by misapplication after taking funds from one of her business's clients. On December 12, 2007, United States District Court Judge D. Brock Hornby issued an order of permanent injunction against Ms. Palesky prohibiting her from inter alia preparing or assisting in the preparation of any federal income tax return and advising anyone about the preparation of a federal income tax

return pursuant to a stipulation filed with the Court on December 6, 2007, executed by the United States and Ms. Palesky. See United States v. Carol East Palesky, No. 2:07-cv-147-DBH (U.S.D.C. D. Maine).

7. Ms. Hamilton prepared 62 federal income tax returns during the 2006 filing season and 20 returns during the 2007 filing season. In addition, Ms. Hamilton prepared tax returns for the 2005 tax filing season but did not sign any of them. As a result, the IRS is unable to determine the exact number of tax returns prepared by Ms. Hamilton during that time period.

8. As of September 25, 2008, the IRS has examined 19 tax returns prepared by Ms. Hamilton for the 2006 tax year. All but one of these examined returns resulted in increases in tax.

9. In 89% of the tax returns examined, adjustments were made to the taxpayers' Schedule A, reflecting fabricated and/or inflated deductions related to employee business expenses. In 37% of the returns examined, adjustments were made to Schedule C reflecting inflated or fictitious deductions. In 37% of the returns examined, adjustments were made to schedule D reflecting inflated and fictitious capital losses. Finally, in 37% of the returns examined, adjustments were made for inflated or fictitious education credits.

10. For example, with respect to the 2006 Form 1040 prepared for taxpayers G.A.P. and R.R.P. of Lewiston, Maine, Ms. Hamilton reported a \$1,000 education credit although the taxpayers never provided any information that would suggest that they were enrolled in college or had incurred any educational expenses during the tax year. In addition, Ms. Hamilton reported a \$1,500 loan loss on these taxpayers' Schedule D even though the taxpayers never provided her

with any information that would indicate that they had loaned anyone funds or incurred a loss of funds loaned.

11. Ms. Hamilton's actions cause harm to the United States and to the public.

12. The IRS has issued erroneous refunds based on fraudulent returns prepared by Ms. Hamilton and has then had to audit her customers and take collection action to attempt to recoup the money. The IRS has incurred an actual tax loss to date from the examined returns of approximately \$40,000. Based on the average actual tax loss per return of \$2,083, and assuming that the examination of all returns prepared by Ms. Hamilton would yield similar increases in tax, the potential total tax deficiencies are estimated to be \$123,000 for the 62 returns that the IRS has determined were prepared by Ms. Hamilton.

13. The IRS has spent considerable time and resources auditing returns prepared by Ms. Hamilton and collecting the taxes owed and erroneous refunds paid.

14. Ms. Hamilton has also harmed her customers because they pay her to prepare these returns, and, after the fraud is detected, are responsible for paying all taxes, interest, and penalties.

**Count I:
Injunction under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701**

15. The United States incorporates by reference the allegations in paragraphs 1 through 14.

16. A court is authorized to issue an injunction if an income tax preparer engages in conduct subject to penalty under 26 U.S.C. § 6701, pursuant to 26 U.S.C. § 7408.

17. Section 6701 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.

18. Ms. Hamilton prepares or assists in the preparation of federal income tax returns for her customers.

19. Ms. Hamilton knew or had reason to believe that these income tax returns would be filed with the IRS and thus would be used in connection with a material matter arising under the internal revenue laws.

20. Ms. Hamilton knew that the federal tax returns she prepares will result in understatements of other persons' tax liabilities.

21. If Ms. Hamilton is not enjoined, she is likely to continue to engage in conduct which violates § 6701.

Count II:

Injunction under 26 U.S.C. § 7407 for Violation of 26 U.S.C. §§ 6694 and 6695

22. The United States incorporates by reference the allegations in paragraphs 1 through 21.

23. A court is authorized to issue an injunction if an income tax return preparer engages in conduct subject to penalty under 26 U.S.C. § 6694 or § 6695, pursuant to 26 U.S.C. § 7407.

24. Section 6694(a) 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 § 6662(d)(2)(B)(ii) or was frivolous.

25. Section 6694(b) 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.

26. Section § 6695 penalizes a tax return preparer who does not sign her name to tax returns she prepares.

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

28. Ms. Hamilton prepares income tax returns that include understatements of her customers' liability which had no realistic possibility of being sustained on the merits; Ms. Hamilton knew or reasonably should have known about these understatements; Ms. Hamilton did not disclose them in accordance with 26 U.S.C. § 6662(d)(2)(B)(ii); and such understatements are frivolous. Ms. Hamilton has thus engaged in conduct subject to penalty under § 6694(a).

29. Ms. Hamilton 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. Ms. Hamilton has thus engaged in conduct subject to penalty under § 6694(b).

30. Ms. Hamilton did not sign all of the tax returns she prepared. Ms. Hamilton has thus engaged in conduct subject to penalty under § 6695.

31. Ms. Hamilton has continually and repeatedly engaged in conduct that violates § § 6694 and 6695. An injunction merely prohibiting Ms. Hamilton 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, Ms. Hamilton 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**

32. The United States incorporates by reference the allegations in paragraphs 1 through 31.

33. A court is authorized to issue orders of injunction as may be necessary or appropriate to enforce the internal revenue laws, pursuant to 26 U.S.C. § 7402(a).

34. Section 7402(a) expressly provides that its injunction remedy is “in addition to and not exclusive of” other remedies for enforcing the internal revenue laws.

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

36. Ms. Hamilton’s conduct causes irreparable harm to the United States and to her customers.

37. Ms. Hamilton is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

38. If Ms. Hamilton is not enjoined, she is likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws.

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

40. The public interest would be advanced by enjoining Ms. Hamilton because an injunction will stop 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 Ms. Hamilton has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that, pursuant to 26 U.S.C. § 7407, an injunction prohibiting such conduct would not be sufficient to prevent Ms. Hamilton's interference with the proper administration of the tax laws and that Ms. Hamilton should be enjoined from acting as an income tax return preparer;

B. That the Court find that Ms. Hamilton is interfering with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a) and the Court's inherent equity powers;

C. That this Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting Ms. Hamilton, individually, and doing business under the name East Coast

Accounting, 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;

D. That this Court, pursuant to 26 U.S.C. § 7402(a), enter a permanent injunction prohibiting Ms. Hamilton, individually and doing business under the name East Coast Accounting, or under any other name or using any other entity, as well as any representatives, agents, servants, employees, attorneys, and/or other persons acting in 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.

E. That this Court, pursuant to 26 U.S.C. § 7402(a), require Ms. Hamilton, at her own expense, to contact by mail all customers for whom she has prepared federal tax returns or assisted in preparing tax returns since January 1, 2005, and send them a copy of any permanent injunction order entered in this case, and to certify to the Court within eleven days of entry of the permanent injunction that she has complied with this provision;

F. That this Court require Ms. Hamilton to provide the United States with a list of everyone for whom she has prepared (or helped to prepare) a federal tax return since January 1, 2005, and set forth on said list all of the names, addresses, e-mail addresses, telephone numbers, and social security numbers of the customers.

G. That this Court permit the United States to conduct post-judgment discovery to ensure Ms. Hamilton's 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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United States Attorney

/s/ Lisa L. Bellamy

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