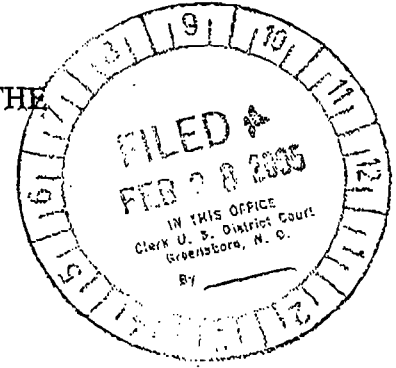


IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
OSCIE K. PARKER,)
)
Defendant.)

Civil No.

1:05CV00167

BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Oscie K. Parker prepares fraudulent federal income tax returns for his customers, and will continue to do so unless he is enjoined. The United States files this motion for preliminary injunction to bar Parker from acting as a tax-return preparer and causing any additional harm during the pendency of this case.

FACTS

Parker prepares federal income tax returns for customers in the Triad area of North Carolina.¹ He operates or has operated his income tax return preparation business through MPS Tax Service, Fastest Tax Refund Service, Bill Jackson Enterprises, Inc., Agencia De Trabajo Latina, and Providian, Ltd.² For tax years 2000 through 2003, Parker prepared 269 federal income tax returns for customers on which he signed his own name as preparer and listed his own social security number.³ For those same years, Parker also prepared an unknown number of

¹ See Exhibit 1, Declaration of Bonnie Underwood ¶¶ 3, at 1.

² *Id.* ¶¶ 3, 11, at 1, 3.

³ *Id.* ¶ 14, at 4.

returns that he signed as preparer using an alias. He also assisted another return preparer with the preparation of still more returns.⁴

Parker-prepared returns for these years contained false deductions and expenses, which the IRS was not always able to detect when the returns were initially processed.⁵ The IRS thus issued erroneous tax refund checks based on these false returns and has had to audit Parker's customers to ascertain the extent of the loss and begin the process of recovering the erroneous refunds.⁶ Parker's conduct harms the Government because of the costs associated with the audits and recovery efforts and because the IRS does not have the resources to detect and recover every improper refund.⁷ Also, as explained below, Parker's actions amount in part to theft from his customers, who pay large fees to Parker but end up owing money to the IRS.⁸

So far, the IRS has audited 59 Parker-prepared returns from tax years 2000 through 2002. Every single one required upward tax adjustments, which averaged approximately \$3,000.⁹ For tax year 2003, Parker prepared at least nine income tax returns. Half of the nine that the IRS has been able to identify appear, from the face of the return, to contain false and fraudulent

⁴ *Id.* ¶¶ 8, 9, 14, at 3-4.

⁵ *Id.* ¶ 5, at 2.

⁶ *Id.*; *See also* Exhibit 2, Declaration of Wanda McGlamery ¶¶ 7, 8, at 2.

⁷ *See* Exhibit 1, Declaration of Bonnie Underwood ¶ 14, at 4; Exhibit 2, Declaration of Wanda McGlamery ¶ 4, at 1-2.

⁸ *See* Exhibit 2, Declaration of Wanda McGlamery ¶ 7,8, at 2; Exhibit 3, Declaration of Barbara Miller; Exhibit 4, Declaration of Carol Blackard; Exhibit 5, Declaration of James Duke.

⁹ *See* Exhibit 1, Declaration of Bonnie Underwood ¶ 15, at 5.

information.¹⁰ With the 2004 filing season now underway, an injunction preventing Parker from preparing or assisting in the preparation of tax returns is necessary to stop any additional damage during the pendency of this case. This is especially important because although he is required by law to do so, Parker does not sign all of the returns he prepares, making it extremely difficult if not impossible for the IRS to detect and audit Parker-prepared returns.¹¹

This fact section contains a description of (A) the returns Parker prepares, (B) the harm Parker causes the Government, (C) the harm Parker causes his customers, and (D) why Parker knows that his actions are wrong.

A. Parker Prepares Returns That Contain False Information and That He Does Not Always Sign With His Own Name.

In 2003, IRS Revenue Agent Bonnie Underwood was assigned to investigate Parker for potential violations of the Internal Revenue Code.¹² Underwood participated in some of the IRS audits of Parker's customers, reviewed all IRS audit files pertaining to Parker's customers, and researched IRS computer records.¹³ Underwood's investigation revealed that all of the audited, Parker-prepared returns contained false information and claimed false deductions, false expenses, false exemptions, false earned income tax credits, and/or falsely claimed head-of-household status.¹⁴

¹⁰ *Id.* ¶ 14, at 9.

¹¹ *Id.* ¶ 7, at 2-3. *See* 26 U.S.C. § 6695(b); 26 C.F.R. § 1.6695-1.

¹² *Id.* ¶ 3, at 1.

¹³ *Id.* ¶ 4, at 1.

¹⁴ *Id.* ¶¶ 5, 15, at 2, 5; *see also* Exhibit 2, Declaration of Wanda McGlamery ¶ 6 at 2.

Among the more common schemes Parker employs is to report fictitious businesses and fictitious business expenses on Schedule C (Profit or Loss From Business) of customers' tax returns.¹⁵ For instance, Parker prepared James Duke's 2001 federal income tax return, which contained a Schedule C that claimed a \$7,435 loss for a business called "Dukes Garage." James Duke, however, had no such business and no such business expenses, and had never told Parker that there was such a business.¹⁶

Parker also uses a Schedule E ("Supplemental Income and Loss") form in his scheme.¹⁷ He falsely lists "rental property" on the schedule and claims deductions for fictitious expenses.¹⁸ For instance, Parker prepared Carol Blackard's 2001 federal income tax return, and included a Schedule E that claimed an \$8,616 loss for expenses purportedly associated with Blackard's rental property.¹⁹ Blackard, however, had no rental property, did not incur those expenses, and had never told Parker that she had.²⁰

Underwood's investigation also revealed that Parker does not sign all of the returns he prepares.²¹ A tax return preparer is required to sign all of the returns he prepares and include his

¹⁵ See Exhibit 1, Declaration of Bonnie Underwood ¶ 6, at 2.

¹⁶ *Id.* ¶ 6, at 2, ex. A; see also Exhibit 5, Declaration of James Duke ¶ 9, 12, at 2-3.

¹⁷ See Exhibit 1, Declaration of Bonnie Underwood ¶ 6, at 2, ex. B.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*; see also Exhibit 4, Declaration of Carol Blackard ¶ 8, at 2.

²¹ See Exhibit 1, Declaration of Bonnie Underwood ¶¶ 4, 7 at 1, 2-3.

IRS-issued identification number or his social security number.²² If the return is electronically filed, the preparer must sign a document, which he or she maintains, and then transmit the preparer information electronically to the IRS.²³ Numerous taxpayers whose returns the IRS audited have told the IRS that they dealt only with Parker in the preparation of their tax returns, but Parker's name did not appear on their returns as the preparer.²⁴ Some of these returns, like that of Barbara Miller, were signed with the name Jesse Orosco, which appears to be an alias Parker uses, not a real person.²⁵ In other instances, it is unclear whether Parker used additional aliases or whether Parker used someone else to actually prepare the return.²⁶

B. Parker's Actions Harm the Government.

The harm Parker's misconduct causes the Government is substantial. Parker, as the preparer, signed his own name to and used his own social security number for 269 returns for tax years 2000 through 2003.²⁷ Parker has also prepared or assisted in preparing an unknown number of other returns.²⁸ This number is likely substantial, given Parker's admission that in

²² *Id.* ¶ 7, at 2. *See* 26 U.S.C. §§ 6109, 6695(b) ; 26 C.F.R. §§ 1.6109-2, 1.6695-1.

²³ *Id.*

²⁴ *Id.* ¶ 7, at 2-3.

²⁵ *Id.* ¶¶ 8, 10, at 3, ex. C; *see also* Exhibit 3, Declaration of Barbara Miller ¶ 5, at 1. There is no Jesse Orosco living in the Triad area of North Carolina and the social security number listed on the return does not belong to a person named Jesse Orosco.

²⁶ *See* Exhibit 1, Declaration of Bonnie Underwood ¶ 9, at 3.

²⁷ *Id.* ¶ 14, at 4.

²⁸ *Id.* ¶¶ 7,8, 9, 13, & 14, at 2-4.

March 2004 he was still interviewing clients, soliciting business, and preparing returns through his daughter-in-law's practice, and given that Parker electronically filed 694 income tax returns through his own and his wife's electronic filing identification numbers for tax years 2000 through 2002.²⁹

The IRS selected for audit 59 returns that taxpayers claim Parker prepared for them or that bear Parker's signature as preparer.³⁰ These returns were selected because the IRS identified them as having a high probability of non-compliance.³¹ All of the audited returns required adjustments, with an average tax understatement of about \$3,000 each for approximately \$177,000 of known additional tax liabilities.³² The overall tax loss, however, is likely much more substantial, considering that there are at least 210 more Parker-prepared returns that have not yet been audited. Given the volume of returns Parker is known to have prepared and the likelihood that some of the liabilities will be uncollectible, the losses to the Government will be much more than \$177,000.

Additionally, the Government has spent considerable time and resources auditing returns prepared by Parker and collecting the taxes owed and erroneous refunds paid.³³ Wanda

²⁹ *Id.* ¶¶ 12, 13, at 3-4. An electronic filing identification number (EFIN) permits someone to transmit tax returns to the IRS for other people via the internet. The holder of an EFIN number can also prepare the tax return, but that is not always the case. *Id.* ¶ 12, at 3-4.

³⁰ *Id.* ¶ 15, at 5.

³¹ *Id.*

³² *Id.*

³³ *See* Exhibit 2, Declaration of Wanda McGlamery ¶ 4, at 1.

McGlamery, a tax compliance officer with the IRS, has alone spent approximately 50% of her time over the last one-and-a-half to two years auditing Parker-prepared returns.³⁴ Another 30% of McGlamery's time has been spent auditing returns that she believes Parker prepared or assisted in preparing, although she has been unable to confirm Parker's participation because the audited taxpayers have been uncommunicative.³⁵

C. Parker's Actions harm his Customers.

Parker meets with his customers before preparing their returns.³⁶ He compiles their tax documents, such as W-2 forms and 1099 forms, and typically inquires about their hobbies, possible businesses, and possible rental properties.³⁷ Parker takes the customer's information and then prepares and files an income tax return on their behalf claiming a refund.³⁸ The IRS issues a refund which, per Parker's instructions on the return, typically is direct deposited into a Parker-controlled bank account.³⁹ Parker gives his customers their "refund" in the form of a check written on a Parker-controlled account and tells his customers that the check represents their

³⁴ *Id.* ¶ 4, at 1.

³⁵ *Id.*

³⁶ *See* Exhibit 3, Declaration of Barbara Miller ¶ 5, at 1; Exhibit 4, Declaration of Carol Blackard ¶ 3, at 1; Exhibit 5, Declaration of James Duke ¶ 4, at 1.

³⁷ *See* Exhibit 4, Declaration of Carol Blackard ¶ 3, at 1.

³⁸ *See* Exhibit 1, Declaration of Bonnie Underwood ¶ 3, at 1; Exhibit 3, Declaration of Barbara Miller ¶¶ 5-6, at 1; Exhibit 4, Declaration of Carol Blackard ¶ 3, at 1; Exhibit 5, Declaration of James Duke ¶ 4, at 1

³⁹ *See* Exhibit 2, Declaration of Wanda McGlamery ¶ 7, at 2; *see also* Exhibit 4, Declaration of Carol Blackard ¶ 4, at 1; Exhibit 5, Declaration of James Duke ¶ 4, at 1; Exhibit 2, Declaration of Wanda McGlamery ¶ 7, at 2

federal tax refund less his fee.⁴⁰

Parker typically does not provide his customers a copy of their tax returns, unless they repeatedly ask for them.⁴¹ Sometimes, despite making such requests, the customers never get copies of the returns or get copies long after the return has been filed with the IRS.⁴²

Some of Parker's customers learn during their IRS audit that the returns Parker prepared for them claim deductions and expenses for rental properties that the customers never had and never told Parker that they had, claim deductions and expenses for businesses that the customers never had and never told Parker that they had, and/or claim deductions and expenses which were otherwise incorrect and made up by Parker.⁴³ The customers also learn that Parker took much more money from their refund than was originally agreed on as a return-preparation fee. In some instances Parker provided the IRS with false and fraudulent receipts.⁴⁴ In the end, the customers

⁴⁰ See Exhibit 3, Declaration of Barbara Miller ¶¶ 7, 8 at 1-2; Exhibit 4, Declaration of Carol Blackard ¶ 4, at 1; Exhibit 5, Declaration of James Duke ¶ 4, at 1; Exhibit 2, Declaration of Wanda McGlamery ¶ 7, at 2.

⁴¹ See Exhibit 3, Declaration of Barbara Miller ¶ 12, at 2; Exhibit 4, Declaration of Carol Blackard ¶ 5, at 1; Exhibit 5, Declaration of James Duke ¶ 6, at 2.

⁴² See Exhibit 3, Declaration of Barbara Miller ¶ 12, at 2; Exhibit 4, Declaration of Carol Blackard ¶ 5, at 1.

⁴³ See Exhibit 3, Declaration of Barbara Miller ¶ 17, at 3; Exhibit 4, Declaration of Carol Blackard ¶ 8, at 2; Exhibit 5, Declaration of James Duke ¶ 12, at 3; *see also* Exhibit 2, Declaration of Wanda McGlamery ¶ 6, at 2.

⁴⁴ See Exhibit 3, Declaration of Barbara Miller ¶¶ 17, 18, at 3; Exhibit 4, Declaration of Carol Blackard ¶ 7, at 2; Exhibit 5, Declaration of James Duke ¶¶ 7, 9 at 2; *see also* Exhibit 2, Declaration of Wanda McGlamery ¶ 7, at 2.

after audit owe the IRS thousands of dollars in taxes and interest.⁴⁵

James Duke, Barbara Miller, and Carol Blackard were all customers of Parker.⁴⁶ Each suffered as a result of their dealings with Parker. Their experiences are described below.

1. Barbara Miller⁴⁷

Barbara Miller hired Parker to prepare her and her husband's 2000 federal income tax return. Parker came to Miller's house and took W-2 forms, 1099 forms, social security information, and her receipts. Miller expected Parker to take the documents, fill out the tax returns, and then bring back the completed returns so that she could approve, sign, and mail them. Instead, Parker brought Miller a check for \$4,173, which Parker stated was her refund less his fee of approximately \$150. Miller was suspicious because she had not been asked to look at or sign a tax return and because the check was not a U.S. Treasury check. Parker reassured Miller and her husband that Parker used the same "program" as the IRS, falsely told them that they did not have to pay income taxes on their social security benefits, and told them that he was completely honest. Miller believed Parker and used him to prepare their federal income tax returns for 2001 and 2002.

In 2003, when the Millers were audited by the IRS for tax years 2000 through 2002 and reviewed their tax returns with the IRS tax compliance officer, they discovered, for the first time,

⁴⁵ See Exhibit 3, Declaration of Barbara Miller ¶ 19, at 3; Exhibit 4, Declaration of Carol Blackard ¶ 9, at 2; Exhibit 5, Declaration of James Duke ¶ 13, at 3.

⁴⁶ See Exhibit 3, Declaration of Barbara Miller ¶ 5, at 1; Exhibit 4, Declaration of Carol Blackard ¶ 2, at 1; Exhibit 5, Declaration of James Duke ¶ 2, at 1.

⁴⁷ See Exhibit 3, Declaration of Barbara Miller.

that the 2000 through 2002 tax returns were not correct. The 2000 and 2001 tax returns contained false business expenses and other made-up information. Also, the Millers' learned that some of the receipts Parker provided to the IRS were false and were created by Parker and not supplied by the Millers. Additionally, the Millers learned that Parker had taken much more than the \$150 fee they agreed upon. For tax year 2000, the IRS had issued a refund check for \$4,883, but Parker had kept \$710 for himself and gave the Millers only \$4,173.

After the audit, the IRS determined that the Millers owed \$5,180.64 in additional tax and interest for tax year 2000, and \$3,731.290 in additional tax and interest for tax year 2001. Although the 2002 tax return was incorrect and required adjustments, the Millers did not owe any additional tax for that year. The Millers were forced to deplete their savings, including selling their stock and cashing in their CD, to undo what Parker had done.

2. *Carol Blackard*⁴⁸

Carol Blackard hired Parker to prepare her 2001 federal and state income tax returns. Parker came to her house and asked her questions about her finances. Among other things, Parker asked if she owned any rental property. Blackard told Parker that she owned approximately six acres of land with a trailer, but that she did not rent the land or the trailer. Blackard also told Parker that the trailer caught fire about ten years earlier and that she had fixed the fire damage about three years ago.

A few days later, Parker stopped by Blackard's home and gave her a check for approximately \$2,100. He said the check represented her tax refund, less his fee of

⁴⁸ See Exhibit 4, Declaration of Carol Blackard.

approximately \$65. The check was not a U.S. Treasury check. Although Blackard asked Parker to do so, he never gave Blackard a copy of her return.

In 2003, The IRS audited Blackard's 2001 federal income tax return. During the audit Blackard learned from the IRS that it had actually issued a refund to her in an amount approximately \$600 greater than the amount Parker had given her. Blackard also discovered that Parker had falsely claimed on her return that she rented the trailer, and discovered that Parker had claimed false deductions for repair costs for the trailer, even though she told Parker that the repairs occurred three years earlier and that the trailer had not been rented. After the audit was completed, Blackard owed approximately \$2,200 in tax and interest. Blackard entered into an installment agreement with the IRS and will be finished paying her tax debt in 2006.

3. *James Duke.*⁴⁹

James Duke hired Parker to prepare his 2000 through 2002 federal and state income tax returns. Duke trusted Parker because Parker had been a family friend for 15 years and they attended the same church. Each year, Duke gave Parker his and his wife's W-2 information, and about a week later, Parker hand-delivered a "refund" check to Duke. The check was not on a U.S. Treasury account. Then, a few weeks later, Duke received a second "refund" check in the mail from a government entity. Duke assumed that one check was for his federal refund and the other check was for his state refund, but he cannot today remember which check was which.

Duke repeatedly asked each year for copies of his tax returns, which Parker eventually provided to Duke. Duke put the copies in a file folder but did not review them.

⁴⁹ See Exhibit 5, Declaration of James Duke.

In March 2003, Duke started receiving letters from the IRS and the State of North Carolina about the tax returns Parker prepared. Duke called Parker, who told him not to worry. Several weeks later, Parker went to Duke's home with some paperwork that Parker told Duke was necessary to resolving Duke's tax issues. On Parker's instructions, Duke created false auto-repair invoices with dates in 2000 and 2001.⁵⁰ Parker also sent Duke a letter telling Duke what information Duke needed to provide Parker to assist in the audit and what information Parker would create himself. For instance, the IRS requested information on the repair costs that were deducted on Duke's return and Parker indicated that Parker would "come up with something."⁵¹ Parker also told Duke that Parker would "cover" questions concerning why Duke got into the auto repair business.

Parker did not resolve the situation, so Duke reviewed his tax return information and discovered that the returns contained false information fabricated by Parker; specifically, the returns indicated that Duke owned a business that he never owned. In addition to owing the State of North Carolina approximately \$4,000, Duke will also owe money to the IRS once the IRS audit is completed.

D. Parker Knows That He Is Filing Fraudulent Returns.

Parker knows that his actions violate the Internal Revenue Code. First, using false numbers, inventing receipts, and taking improper deductions are clearly wrong and show Parker's willful violations of the tax laws. For the protection of both the government and his

⁵⁰ See Exhibit 5, Declaration of James Duke ¶ 9, at 2 and ex. A.

⁵¹ See Exhibit 5, Declaration of James Duke ¶ 10, at 2-3 and ex. B.

customers, Parker ought not to be acting as a tax preparer.

Second, even though Parker knew in 2002 that he was under IRS investigation, he did not stop his improper actions.⁵² For the last filing season (tax year 2003), Parker signed nine returns as the preparer. Approximately half of those returns have clear audit potential, meaning that from the face of the return it appears that there is false and fraudulent information on the return.⁵³

Third, Parker is trying to impede the IRS's investigation and conceal his fraudulent conduct by not signing all of the returns he prepares and by signing returns using false names.⁵⁴ Thus, the IRS's investigation of Parker has caused Parker to take steps to conceal his illegal conduct. Of the 269 returns for which Parker listed himself as the preparer, two were filed in 2000, 238 were filed in 2001, 20 were filed in 2002, and only 9 were filed in 2003.⁵⁵ The 2004 filing season is underway; Parker needs to be stopped quickly before he causes additional harm to the Government and his customers.

QUESTIONS PRESENTED

1. Has Parker engaged in conduct subject to penalty under Internal Revenue Code §§ 6694, 6695 and/or 6701?
2. Has Parker otherwise interfered with the enforcement of the internal revenue laws?
3. Is injunctive relief appropriate pursuant to Internal Revenue Code §§ 7407, 7408,

⁵² See Exhibit 1, Declaration of Bonnie Underwood ¶ 12, at 4.

⁵³ *Id.* ¶ 14, at 4.

⁵⁴ See Exhibit 1, Declaration of Bonnie Underwood ¶¶ 7-10, at 2-3.

⁵⁵ *Id.* ¶ 14, at 4.

and/or 7402?

4. Is injunctive relief appropriate in accordance with Federal Rule of Civil Procedure 65 and this Court's inherent equity powers?

ANALYSIS

The evidence submitted with this motion clearly establishes that the Court should preliminarily enjoin Parker under §§ 7407, 7408, and 7402 of the Internal Revenue Code (I.R.C.; 26 U.S.C.) from acting as an income tax return preparer or otherwise assisting others preparing federal tax returns.⁵⁶ To obtain a preliminary injunction under one of the aforementioned statutes the United States need only meet the requirements of that particular statute and need not prove the traditional equitable grounds for an injunction.⁵⁷ Nonetheless, as outlined below, the traditional equitable factors have been proven as well.

⁵⁶ Preliminary injunctions enjoining tax return preparation have been issued in the following other cases: *United States v. Shiff*, 379 F.3d 621, 625 (9th Cir. 2004) (affirming district court's preliminary injunction order enjoining Shiff from, among other things, preparing federal income tax returns); *United States v. Binge*, 2004 WL 2600770 (ND Ohio 2004); *United States v. Franchi*, 756 F. Supp. 889, 895 (WD Pa. 1991); *but see United States v. DeAngelo*, 2003 WL 23311522 (C.D. Cal. 2003) (denying Government's request for a preliminary injunction preventing defendant from preparing taxes).

⁵⁷ *Abdo v. United States*, 234 F. Supp.2d 553, 564 (M.D.N.C. 2002); *Duke v. Uniroyal, Inc.*, 777 F. Supp. 428, 433 (E.D.N.C. 1991) (finding that where an injunction is expressly authorized by statute, and the statutory conditions have been satisfied, the moving party is not required to establish irreparable injury before obtaining injunctive relief); *United States v. Music Masters, LTD.*, 621 F. Supp. 1046, 1058 (W.D.N.C. 1985) ("Traditional equity grounds need not be proven in order for an injunction that is authorized by statute."); *but see United States v. Ernst & Whinney*, 735 F.2d 1296, at 1301 (11th Cir. 1984), *cert. denied*, 470 U.S. 1050, 105 S. Ct. 1748 (1985) (traditional equitable grounds need to be shown for an injunction pursuant to § 7402 only); *United States v. Hollar*, 885 F. Supp. 822, 825 (M.D.N.C. 1995)(traditional factors need to be proven for an injunction pursuant to § 7402 only).

A. Internal Revenue Code Sections 7407, 7408, and 7402.

1. *Parker's Preparation of Frivolous Returns, His Failure To Sign Them or To Provide His Identifying Number, His Failure to Provide his Customers with a Copy of Their Return, and His Failure to Give His Clients Their Refund Violate § 7407.*

Section 7407 authorizes a court to enjoin a person from acting as an income tax return preparer if that person continually or repeatedly engages in conduct subject to penalty under I.R.C. § 6694 or § 6695, and if an injunction simply prohibiting the conduct subject to penalty would not be sufficient to prevent interference with the proper administration of the Internal Revenue Code.⁵⁸ I.R.C. § 6694(a)⁵⁹ penalizes a tax return preparer

1. who 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 income tax return preparer knew (or reasonably should have known) of such position; and
3. such position was frivolous.

Parker prepares income tax returns for customers with frivolous, made-up information which results in understatements of liability which have no realistic possibility of being sustained on the merits. As described above, Parker knew or reasonably should have known about these understatements. Parker's actions are subject to penalty under § 6694(a).

I.R.C. § 6695 penalizes a tax return preparer who does not furnish a copy of the tax return to the customer, who does not sign his name on and list his proper tax identification number on

⁵⁸ 26 U.S.C. § 7407(b).

⁵⁹ *Id.* § 6694(a).

tax returns he prepares, or who negotiates a customer's tax refund check.⁶⁰ Parker has engaged in conduct subject to the § 6695 penalty by failing to sign and provide his tax identification number on returns he prepares, failing to provide his customers with a copy of their returns, and depositing his customers' tax refunds into his own bank account.⁶¹

Parker's repeated misconduct continues despite knowing that the IRS is investigating him for this conduct and knowing that his actions are wrong. Parker shows no signs of stopping; an injunction simply preventing the prohibited conduct would not be sufficient to prevent interference with the proper administration of the tax laws. Accordingly, an injunction prohibiting Parker from preparing any income tax returns for others or assisting in preparing income tax returns for others is warranted by the evidence and the law.

2. *Injunctive Relief Is Warranted under I.R.C. § 7408 Because Parker's Preparation of Frivolous Tax Returns and Receipts Violates I.R.C. § 6701.*

Section 7408 authorizes a court to enjoin a person from engaging in 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.⁶² I.R.C. § 6701⁶³ penalizes any person

- 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;
- 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

⁶⁰ 26 U.S.C. §§ 6695(b), 6695(d), 6695(f).

⁶¹ 26 U.S.C. § 6695.

⁶² 26 U.S.C. § 7408(b).

⁶³ *Id.* § 6701.

- who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

The evidence submitted with this motion establishes that Parker is engaging in conduct subject to the § 6701 penalty, and that he will continue unless enjoined. Parker is preparing or directing others to prepare tax returns claiming false or fraudulent deductions, exemptions, and credits. These returns falsely under-report his customers' tax liability and falsely claim inflated tax refunds. Parker also engages in § 6701 penalty conduct by preparing or directing others to prepare false and fraudulent receipts, to be submitted to the IRS to "support" Parker's made-up tax-return information. Parker knew, and in fact intended, that these documents would be used in connection with material tax matters, and they clearly resulted in gross understatements of customers' tax liabilities. A preliminary injunction is necessary to prevent Parker from filing more fraudulent returns.

3. *Parker should be enjoined in Accordance with § 7402.*

Section 7402(a) of the Internal Revenue Code authorizes district courts to issue injunctions "as may be necessary and appropriate for the enforcement of the internal revenue laws."⁶⁴ The language of § 7402(a) is broad and manifests "a congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws."⁶⁵

Parker is violating the internal revenue code by filing fraudulent returns, not signing all

⁶⁴ *Id.* § 7402.

⁶⁵ *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957); *See also, United States v. First National City Bank*, 568 F.2d 853, 855-56 (2nd Cir.1977).

of the returns he prepares, not providing his clients with copies of their returns, and negotiating his customer's tax refund checks. Also, as outlined in the next section, the traditional equitable factors weigh in favor of the Government and thus support injunctive relief pursuant to § 7402.⁶⁶

B. Traditional Equitable Grounds.

The Fourth Circuit requires a movant to establish four elements for issuance of a preliminary injunction: (1) the likelihood of irreparable harm to the plaintiff if the injunction is denied; (2) the likelihood of harm to the defendant if it is granted; (3) the likelihood that plaintiff will succeed on the merits; and (4) the injunction is in the public interest.⁶⁷ "In applying this four-factor test, '[t]he irreparable harm to the plaintiff and the harm to the defendant are the two most important factors.'"⁶⁸ As outlined below, the United States has met its burden.

1. The United States Will Suffer Irreparable Harm If The Relief Is Not Granted.

The 2004 tax filing season is underway. Without court involvement, Parker will doubtless continue to prepare or assist in preparing false and fraudulent returns. The irreparable harm to the United States is shown in the administrative costs it will incur as a result of Parker's scheme. Also, Parker's actions cause harm to the public fisc from the issuance of erroneous tax refunds, the collection of which will be difficult given the volume of audits that need to be

⁶⁶ *United States v. Hollar*, 885 F. Supp. at 825 (traditional factors need to be proven for an injunction pursuant to ¶7402 only).

⁶⁷ *Child Evangelism Fellowship of Maryland, Inc. v. Montgomery County*, 373 F.3d 589, 593 (4th Cir. 2004); *Syngenta Crop Protection, Inc. v. United States Environmental Protection Agency*, 202 F. Supp.2d 437, 448-49 (M.D.N.C. 2002).

⁶⁸ *In re Microsoft Corp. Antitrust Litigation*, 533 F.3d 517, 526 (4th Cir. 2003) (internal citations omitted).

conducted, the likelihood that some accounts will be uncollectible, and the fact that Parker does not sign all of the returns he prepares making detection difficult.

2. *Defendant Will Not Suffer Harm If The Relief Being Sought Is Granted.*

The Government seeks an order requiring Parker to stop preparing or assisting in the preparation of returns during the pendency of this case. The Government seeks this relief because a very high proportion, if not all, of the tax returns Parker prepares for customers contain fraudulent information.⁶⁹ An order preventing Parker from acting as a return preparer will thus only cause Parker to stop breaking the law, which is not a cognizable harm to him.⁷⁰ Instead, granting a preliminary injunction will prevent tax revenues from being lost and prevent harm to Parker's customers.⁷¹

3. *There Is A Substantial Likelihood That the United States Will Prevail On The Merits.*

The overwhelming evidence of Parker's repeated and clear violations of federal tax laws, *i.e.*, filing fraudulent tax returns, not signing all of the returns he prepares, not providing his customers with copies of their returns, and depositing customers' refunds into his own bank account, shows that the government will succeed on the merits of this case.

⁶⁹ See Exhibit 1, Declaration of Bonnie Underwood ¶ 15, at 5.

⁷⁰ Injunctions requiring compliance with the law are typically permitted because they do not cause harm. *United States v. Campbell*, 897 F.2d 1317, 1324 (5th Cir. 1990); *Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (Injunctions requiring people to follow the law do not cause hardship).

⁷¹ See generally *United States v. First Nat'l. City Bank*, 379 U.S. 378, 385 (1965).

4. *Issuance Of A Preliminary Injunction Serves The Public Interest.*

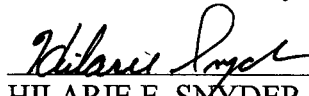
"[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need."⁷² The public interest is served when misleading and fraudulent commercial practices are stopped, and when proper taxes are collected. Under the guise of being a competent tax preparer, Parker has collected exorbitant fees from his customers and then left them having to repay thousands of dollars to the IRS once Parker's fraud is detected. Without an injunction, Parker's actions will surely continue. In this case, the public interest is clearly served by a preliminary injunction barring Parker from preparing tax returns for others.

CONCLUSION

Defendant Oscie K. Parker prepares returns with false and fraudulent information. His actions harm the IRS and his customers. Unless this Court enjoins Parker, the Government and the public will continue to suffer from his misconduct. The proposed preliminary injunction submitted herewith should be entered.

Respectfully submitted,

ANNA MILLS S. WAGONER
United States Attorney

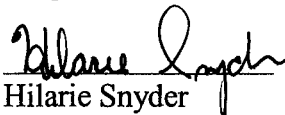


HILARIE E. SNYDER
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238; Ben Franklin Station
Washington, D.C. 20044
Tel.: (202) 307-2708
Fax: (202) 514-6770

⁷² *Bull v. United States*, 295 U.S. 247, 259 (1934).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief and the accompanying exhibits will be hand-delivered to Oscie K. Parker along with the Complaint.


Hilarie Snyder