

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SABINA LOVING; ELMER)	
KILIAN; and JOHN GAMBINO,))	
)	
Plaintiffs,)	
)	
v.)	No. 1:12-cv-00385-JEB
)	
UNITED STATES OF AMERICA;)	
INTERNAL REVENUE SERVICE;)	
and DOUGLAS H. SHULMAN,)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
)	
Defendants.)	
)	

ANSWER

The United States of America, the Internal Revenue Service, and Douglas H. Shulman, sued in his official capacity as the Commissioner of Internal Revenue (collectively "defendants"), answer the numbered paragraphs in plaintiffs' complaint as follows. To the extent that an allegation is not expressly admitted below, the defendants hereby deny that allegation.

1. Paragraph 1 is a narrative including multiple allegations that violates Fed.R.Civ.P. 10(b)'s requirement that each paragraph in the complaint "be limited as far as practicable to a single set of circumstances," and therefore requires no response. To the extent a response is required, the defendants admit the allegations of the first three sentences of Paragraph 1. With respect to the

allegations of the fourth sentence, defendants deny that groups “lobbied for an exemption” but admit that certain tax preparation firms, industry groups, and other interested members of the public commented on the August 2011 amendments to the regulations at issue, 31 C.F.R. Part 10 (reprinted as Treasury Department Circular No. 230 (“Circular 230")), and that the Treasury Department and Internal Revenue Service considered those comments when developing the Circular 230 regulations and other relevant guidance. The defendants otherwise deny the remaining allegations of the fourth sentence and all allegations of the fifth and sixth sentences for lack of knowledge or information sufficient to form a belief as to the truth of those allegations. The defendants deny the allegations of the seventh and eighth sentences of Paragraph 1.

2. Admitted.

3. Admitted.

4. The defendants admit that each plaintiff has obtained a provisional Preparer Tax Identification Number (“PTIN”), but deny the remaining allegations of Paragraph 4 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

5. The defendants deny the allegations of Paragraph 5 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

6 The defendants deny the allegations of Paragraph 6 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

7. The defendants deny the allegations of Paragraph 7 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

8. Admitted.

9. Admitted.

10. Admitted.

11. Paragraph 11 consists in allegations of law to which no response is required. To the extent a response is required, defendants construe "tax preparer" as "tax return preparer," and admit that term is defined in 26 U.S.C. section 7701(a)(36), 26 C.F.R. section 301.7701-15, and 26 C.F.R. section 1.6109-2(g).

12. Admitted.

13. In response to the allegations of Paragraph 13, the defendants admit that the cited statutory provisions existed before and after August 2011, admit that tax return preparers who demonstrate a pattern of misconduct may be enjoined from tax return preparation, but deny the remaining allegations of Paragraph 13.

14. In response to the allegations of Paragraph 14, the defendants admit that effective January 1, 2011, any individual who is compensated for

preparing, or assisting in the preparation of all or substantially all of a tax return or claim for refund, must have a PTIN and include the PTIN on any tax return or claim for refund requiring such information. The defendants admit that one purpose of the PTIN requirement is to allow the Internal Revenue Service better to identify tax return preparers, but deny the remaining allegations of Paragraph 14.

15. Defendants admit the allegations of the first sentence of Paragraph 15. With respect to the allegations of second sentence, the defendants admit that prior to October 2012 no continuing education credits are required for PTIN renewal, but deny the remaining allegations of the second sentence.

16. Defendants construe "PTIN" as "PTIN or provisional PTIN," and so construed, admit the allegations of Paragraph 16.

17. Paragraph 17 consists in allegations of law to which no response is required; to the extent a response is required, defendants admit that 31 U.S.C. section 330 includes the quoted phrases but deny that plaintiffs completely or accurately quote section 330 or accurately describe its legal effect.

18. In response to the allegations of Paragraph 18, the defendants admit that attorneys and certified public accountants in good standing may represent taxpayers in hearings, conferences, meetings, or other proceedings before the Internal Revenue Service, but the remaining allegations consist in allegations of law to which no response is required; to the extent a response is required, denied.

19. The defendants admit that the Circular 230 permits individuals who are not attorneys or certified public accountants but who are enrolled agents, enrolled retirement plan agents, enrolled actuaries, and registered tax return preparers to practice before the Internal Revenue Service as their qualifications permit, but deny the remaining allegations of Paragraph 19.

20. Paragraph 20 consists of allegations of law to which no response is required; to an extent a response is required, the allegations are denied, including denying the allegation that 26 C.F.R. § 601.502 determines which individuals may “practice” before the Internal Revenue Service.

21. Paragraph 21 consists of allegations of law to which no response is required; to an extent a response is required, the allegations are denied, including denying the allegation that 26 C.F.R. § 601.502 determines which individuals may “practice” before the Internal Revenue Service.

22. The defendants admit that 26 C.F.R. § 601.502(c) includes the phrases quoted, but the remaining allegations of Paragraph 22 consist in allegations of law to which no response is required; to an extent a response is required, the allegations are denied, including denying the allegation that 26 C.F.R. § 601.502 determines which individuals may “practice” before the Internal Revenue Service.

23. The defendants admit the allegations of Paragraph 23 except that they deny that Form 2848 refers to a “recognized representative.”

24. Paragraph 24 consists in allegations of law to which no response is required; to the extent a response is required, defendants admit that Internal Revenue Code section 7521 provides procedures involving taxpayer interviews, admit that an individual authorized to practice before the Internal Revenue Service who is not disbarred or suspended may represent a taxpayer in an interview described in Internal Revenue Code section 7521(a), but deny the remaining allegations of Paragraph 24.

25. The defendants admit that Revenue Procedure 68-29 includes the quoted phrase, but otherwise deny the allegations of Paragraph 25.

26. The defendants admit that Circular 230 contains rules governing the practice of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service, but otherwise deny the allegations of Paragraph 26.

27. The defendants admit that in 2011 the Department of the Treasury promulgated final regulations regarding “registered tax return preparers” and amending Circular 230, but deny the remaining allegations of Paragraph 27.

28. Admitted.

29. The defendants deny the allegations of Paragraph 29 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations, except that they admit that certain tax preparation firms commented on the regulations and supported aspects of the regulations.

30. With respect to the allegations of Paragraph 30, the defendants admit that tax return preparers who are not attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, enrolled actuaries, or supervised tax return preparers as described in section 1.02(a) of Notice 2011-6, must become registered tax return preparers in order to prepare Form 1040 series tax returns for compensation, but deny the remaining allegations of Paragraph 30 including denying that an individual with a PTIN must become a registered tax return preparer in order to prepare solely non-1040 series tax returns.

31. Admitted.

32. Admitted.

33. With respect to the allegations of Paragraph 33, the defendants deny that the “IRS has given itself the authority” to require registered tax return preparers to comply with 31 C.F.R. section 10.5 as that authority is provided by statute.

34. Admitted.

35. Paragraph 35 consists in allegations of law to which no response is required; to the extent a response is required, defendants deny the allegations of Paragraph 35 in that Circular 230 describes the scope of practice as a “registered tax return preparer” in 31 C.F.R. section 10.3(f)(2) and 31 C.F.R. section 10.3(f)(3).

36. Admitted.

37. The defendants admit the allegations in Paragraph 37 only to the extent that no practitioner is required to obtain a power of attorney or complete a Form 2848 in order to prepare and file tax returns or claims for refund for taxpayers as a compensated tax return preparer.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. The defendants construe “panel of industry insiders” as a “panel of subject matter experts” and, so construed, admit the allegations of Paragraph 42.

43. Admitted.

44. The defendants admit the allegations of Paragraph 44 except that they deny that the PTIN renewal fee is \$64.25.

45. Admitted.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. The defendants admit the allegations of Paragraph 50 except that they deny that either Circular 230 or Notice 2011-6 prohibits any tax return preparer from employing other tax return preparers.

51. The defendants deny the allegation in Paragraph 51 that groups “lobbied” for an “exemption for ‘supervised preparers’” but admit that certain tax preparation firms, industry groups, and other interested members of the public commented on the August 2011 amendments to the regulations at issue, 31 C.F.R. Part 10 (reprinted as Circular 230), and that the Treasury Department and Internal Revenue Service considered those comments when developing the Circular 230 regulations and other relevant guidance. The defendants deny the remaining allegations of Paragraph 51 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

52. The defendants admit the allegations of Paragraph 52 except that they deny that 31 U.S.C. § 330 is the exclusive basis for the Secretary of the Treasury and/or the Internal Revenue Service to implement new regulations governing registered tax return preparers.

53. The defendants admit the allegations of Paragraph 53 except that they deny that 31 U.S.C. § 330 is the exclusive basis for the Secretary of the Treasury and/or the Internal Revenue Service to regulate tax return preparers.

54. Denied.

55. Denied.

56. Denied.

57. The defendants admit the allegation in Paragraph 57 that preparing and filing tax returns or claims for refund for a taxpayer does not require a power of attorney, but the remaining allegations of Paragraph 57 consist in

allegations of law to which no response is required; to the extent a response is required, denied.

58. The defendants admit that July 7, 1884, ch. 334, § 3, 23 Stat. 258, includes the phrases quoted in Paragraph 58. Paragraph 58's remaining allegations are allegations of law to which no response is required; to the extent a response is required, denied.

59. Paragraph 59 consists of allegations of law to which no response is required; to the extent a response is required, denied.

60. Denied.

61. The defendants deny the allegations of Paragraph 61 except that they admit that the Taxpayer Bill of Rights Act of 2008, H.R. 5716, 110th Cong. § 4(a) (2008) included the phrase quoted.

62. The defendants deny the allegations of Paragraph 62 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

63. The defendants deny the allegations of Paragraph 63 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

64. The defendants admit that plaintiff Sabina Loving has a provisional PTN, but deny the remaining allegations of Paragraph 64 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

65. The defendants deny the allegations of Paragraph 65 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

66. The defendants deny the allegations of Paragraph 66 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

67. The defendants deny the allegations of the first sentence of Paragraph 67 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations. The defendants deny the allegations of the second sentence of Paragraph 67.

68. The defendants deny the allegations of Paragraph 68 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

69. The defendants deny the allegations of Paragraph 69 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

70. The defendants deny the allegations of Paragraph 70 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

71. The defendants deny the allegations of Paragraph 71 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

72. The defendants deny the allegations of Paragraph 72 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

73. The defendants admit that plaintiff Elmer Kilian has applied for a provisional PTIN, but deny the remaining allegations of Paragraph 73 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

74. The defendants deny the allegations of Paragraph 74 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

75. The defendants deny the allegations of Paragraph 75 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

76. The defendants admit that the annual PTIN renewal fee is currently more than \$60 per year, but deny the remaining allegations of Paragraph 76 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

77. The defendants deny the allegations of Paragraph 77 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

78. The defendants admit that plaintiff John Gambino has a provisional PTIN, but deny the remaining allegations of Paragraph 78 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

79. The defendants deny the allegations of Paragraph 79 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

80. The defendants deny the allegations of Paragraph 80 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

81. The defendants deny the allegations of Paragraph 81 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

82. The defendants deny the allegations of Paragraph 82 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

83. The defendants deny the allegations of Paragraph 83 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

84. Denied.

85. Paragraph 85 consists of allegations of law to which no response is required, to the extent a response is required, the allegations are denied.

86. Denied.

87. The defendants admit the allegations of Paragraph 87 except that they deny that the identified costs are “substantial.”

88. The defendants admit the allegations of Paragraph 88 except that they deny that amount of time required would be “substantial” or impose “substantial opportunity costs on Plaintiffs.”

89. The defendants deny the allegation in Paragraph 89 that a “substantial opportunity cost” would be imposed and deny the remaining allegations of Paragraph 89 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

90. The defendants admit the allegations of the first sentence of Paragraph 90 but deny the allegations of the second sentence of Paragraph 90.

91. The defendants admit that passing a written test is required in order to qualify as a registered tax return preparer, admit that a specific passing score is not provided to test-takers in advance of the test, but deny that “substantial opportunity costs” are imposed on plaintiffs, and deny the remaining allegations of Paragraph 91 for lack of knowledge or sufficient information to form a belief as to the truth of those allegations.

92. The defendants deny the allegations of Paragraph 92 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

93. The defendants deny the allegations of the third sentence of Paragraph 93. The defendants deny the remaining allegations of Paragraph 93

for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

94. The defendants deny the allegations of Paragraph 94 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

95. The defendants deny the allegations of Paragraph 95 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

96. The defendants deny the allegations of the first sentence of Paragraph 96. The defendants admit that tax return preparers are subject to civil and criminal statutes governing tax preparation and are required to obtain a PTIN, but deny the remaining allegations of Paragraph 96 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

97. The defendants incorporate all preceding allegations as if set forth in full.

98. Denied.

99. Denied.

WHEREFORE, having fully answered the allegations of the complaint, the defendants respectfully pray as follows:

A. For judgment in their favor, denying the relief sought in the complaint and dismissing the claims with prejudice;

B. That the defendants recover their attorneys' fees and costs incurred in defending this civil action; and,

C. For such other and further relief as the court may deem to be just and appropriate.

Dated: June 4, 2012

/s/ Joseph E. Hunsader
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United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2012, I caused to be served via the Court's ECF system the following documents:

(1) ANSWER

upon:

Dan Alban
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/s/ Joseph E. Hunsader
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