

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 6:17-cv-35-Orl-18TBS

VICKY BARWICK, JASMINE MORALES
and Q A TAX SERVICE, INC.,

Defendants.

REPORT AND RECOMMENDATION

The case came on for consideration following an evidentiary hearing held pursuant to a referral from the United States District Judge (Doc. 33).

I. Background

The government filed suit against Defendants Vicky Barwick a/k/a Vicky Eddleman, Jasmine Morales a/k/a Jasmine Rivera, and Q A Tax Service, Inc., seeking to enjoin them from acting as tax return preparers and for disgorgement of ill-gotten gains (Doc. 1). Defendants were defaulted (Docs. 17, 24-27), and the government moved for entry of a default judgment consisting of a permanent injunction under 26 U.S.C. §§ 7407 and 7408, barring Barwick, Morales, and Q A Tax Service, Inc. from acting as tax return preparers and from owning and operating a tax preparation business; and, under 26 U.S.C. § 7402, for disgorgement of the monies Defendants received for the preparation of falsified tax returns (Doc. 30). I issued a report and recommendation that the motion be granted, as to the issuance of the injunction, but denied without prejudice to the extent it sought entry of a judgment of disgorgement in the amount of \$389,656, without first holding an evidentiary hearing to establish the amount (Doc. 31). My recommendation

was adopted (Doc. 33) and the case was referred to me for additional proceedings. An evidentiary hearing was noticed (Doc. 35), and none of the Defendants appeared.

The government has obtained records of the gross receipts received for the preparation of tax returns filed by Q A Tax Service, Inc. in 2016 and 2017 from Santa Barbara Bank and Trust, a tax refund processor (Hearing Exhibits 40-55). These records were authenticated and admitted into evidence based upon the Certificate of Authenticity for Business Records executed under penalty of criminal punishment by Monique White as custodian of the records (Hearing Exhibit 39). The records show that Santa Barbara Bank and Trust subtracted the Defendants' tax preparation fees from customers' tax refunds and disbursed those fees to Defendants. The records also show the amount of tax preparation fees disbursed to Defendants by Santa Barbara Bank and Trust (Id.).

The government also presented live testimony, and introduced into evidence, Internal Revenue Service records showing that Defendants filed 822 tax returns in 2016 and 432 tax returns in 2017 using Electronic Filing Identification Numbers ("EFINs") associated with Q A Tax Service, Inc. (Hearing Exhibits 1 and 2). Amanda Reinken is a Paralegal Specialist in the IRS Tax Division (Hearing Testimony). She testified that she received the documents in electronic format and combined them with Electronic Fraud Detection System reports for 2016 and 2017; then cross-referenced names and social security numbers and created one spreadsheet for tax returns filed in 2016 and another for 2017 (Id.). Ms. Reinken then isolated the returns for the following three categories: (1) tax returns that falsely claimed the Earned Income Tax Credit; (2) tax returns which included Form Schedule Cs reporting non-existent businesses that incurred phony expenses to generate net losses greater than \$5,000; and (3) tax returns reporting fabricated unreimbursed employee business expenses (Id.). According to the government

witnesses, these three categories capture the Defendants' most prevalent misconduct during the 2016 and 2017 tax years. Based upon this analysis, the government calculated that Defendants profited from the violations in the amount of at least \$290,887.03 in 2016, and \$98,768.97 in 2017.

II. Discussion

The government has already established its entitlement to the remedy of disgorgement leaving only the issue of proof to support the amount sought. As explained in my prior report, "[d]isgorgement in the amount of a defendant's 'ill-gotten gains' constitutes a 'fair and equitable' remedy as it reminds the defendant of its legal obligations, serves to deter future violations of the Internal Revenue Code, and promotes successful administration of the tax laws." United States v. Stinson, 239 F. Supp. 3d 1299, 1326 (M.D. Fla. 2017), motion for relief from judgment granted, No. 6:14-CV-1534ORL-22TBS, 2017 WL 2493239 (M.D. Fla. May 21, 2017). If entitled to disgorgement, the government need only produce a reasonable approximation of the defendants' ill-gotten gains. See S.E.C. v. Calvo, 378 F.3d 1211, 1217 (11th Cir. 2004).

The government has shown by testimony and business records admitted into evidence at the hearing that Defendants received at least \$389,656 for the preparation of tax returns in 2016 and 2017 which falsely claimed the Earned Income Tax Credit; claimed on Forms Schedule C that customers had non-existent businesses that incurred phony expenses to generate net losses greater than \$5,000; and reported fabricated unreimbursed employee business expenses.

IV. Recommendation

Upon consideration of the foregoing, I **respectfully recommend** that:

(1) Judgment be entered in favor of the United States and against Vicky Barwick,

Jasmine Morales, and Q A Tax Service, Inc., jointly and severally, in the amount of \$389,656 on the United States' claim, brought under 26 U.S.C. § 7402, for the disgorgement of the ill-gotten gains Vicky Barwick, Jasmine Morales, and Q A Tax Service, Inc. received for the preparation of falsified tax returns.

(2) Upon entry of judgment, the Clerk be directed to terminate any pending motions and close the case.

V. Notice to Parties

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.

RESPECTFULLY RECOMMENDED at Orlando, Florida on January 25, 2018.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Presiding United States District Judge
Counsel of Record
Unrepresented Parties