

Complaint

85 F.T.C.

IN THE MATTER OF
TAX CORPORATION OF AMERICA (MARYLAND), ET
AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2649. Complaint, Mar. 6, 1975 - Decision, Mar. 6, 1975

Consent order requiring a Montrose, Calif., firm engaged in the sale of personal income tax preparation services, mutual funds, lines of insurance, and individual budgeting and bill paying services, among other things to cease misrepresenting their income tax preparation services, and using tax return information for other purposes without the customer's prior consent.

Appearances

For the Commission: *Louis Rosenman.*

For the respondents: *Lawrence G. Meyer, Patton, Boggs & Blow,*
Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Tax Corporation of America (Maryland) and Tax Corporation of America (Delaware), corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tax Corporation of America (Maryland) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 2441 Honolulu St., Montrose, Calif.

Respondent Tax Corporation of America (Delaware) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 2441 Honolulu St., Montrose, Calif. It is a wholly-owned subsidiary of, and is managed, directed and controlled by, respondent Tax Corporation of America (Maryland).

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, and sale of personal income tax preparation services, mutual funds, lines of insurance, individual budgeting and bill paying services to the general public.

Respondents sell their aforesaid products through various corporate subsidiaries, affiliates, and counselors, hereinafter referred to, for convenience, as respondents' representatives.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, monies, contracts, business forms and other commercial paper and printed materials, in connection with said income tax preparation, mutual funds, lines of insurance, individual budgeting and bill paying services, to be sent by United States mail from respondents' place of business in the State of California to their local offices, representatives and purchasers of respondents' products and services located in various other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents and their representatives have disseminated, and cause the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 5. For the purpose of disseminating such advertisements, respondents and their representatives have employed direct mail literature, newspaper insertions, "door hangers" and point of sale promotional materials.

Typical of the statements and representations in said advertisements, but not all inclusive thereof, is the following:

(a) Your Receipt and Triple Guarantee

GUARANTEED ACCURACY: Our returns triple checked for accuracy of mathematics and reproduction. If we make an error, resulting in any penalty or interest, we will pay that penalty or interest.

GUARANTEED PROTECTION: If your return is questioned by the government, we handle all details at no additional charge.

(b) Please believe me when I say that the average family loses from \$50 to \$100 by trying to stand up to the tax law alone.

(c) Tax Service In Your Home

Computerized

Guaranteed Accuracy

Guaranteed Protection

Reasonable Rates

(d) Nine times out of ten, it doesn't pay to be your own tax expert, and miss valuable deductions.

Of those who asked us to check out their returns, over 90% have saved much more than our low fee.

PAR. 6. By and through the use of the above-quoted statements and

representations, and others of similar import and meaning, but not expressly set out herein, respondents and their representatives have represented, and are now representing, directly or by implication, that:

1. Respondents will reimburse the taxpayer for any payments the taxpayer may be required to make in addition to his initial tax payment if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. If the customer's tax return is audited, respondents and their representatives are authorized and/or will provide to their customers legal representation, without charge, by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service.

3. In fact over ninety percent of respondents' tax preparation customers have saved more than the amount of the fee respondents charged by having respondents prepare their tax return.

PAR. 7. In truth and in fact:

1. Respondents and their representatives do not reimburse the taxpayer for all payments he is required to make in addition to his initial tax payment if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. In instances where the customer's tax return is audited, respondents and their representatives are not authorized and are prohibited by the Internal Revenue Service from providing to their customers legal representation by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service.

3. The percentage of respondents' tax preparation customers who have saved more than the amount of the fee charged by respondents by having respondents prepare their tax returns is only an estimation and does not necessarily represent a true percentage.

Therefore, the statements and representations set forth in Paragraphs Five and Six hereof were, and are false, misleading and deceptive.

PAR. 8. In the further course and conduct of their business, respondents and their representatives enter into a relationship with their tax preparation customers which is impliedly represented as, and is inherently confidential and private in nature. As a result of the aforesaid relationship, respondents and their representatives are provided and receive certain information from their tax preparation customers. Respondents and their representatives retain a copy of the forms submitted by their representatives for each customer, on the basis of information provided by the customer, ostensibly for respondents' use in the preparation of the customer's tax return. The aforesaid forms contain private and confidential data of both a personal

and financial nature for each tax preparation customer of respondents and their representatives.

Respondents and their representatives, during the initial interview with the customer and at various times subsequent thereto, make a determination as to whether they should solicit the customer for the sale of insurance, mutual funds and other services offered by respondents or other companies. On the basis of such determination respondents and their representatives solicit the tax preparation customer, either orally and in person, or by mail or telephone, for the purpose of inducing the customer to purchase insurance, mutual funds or other services.

Respondents use, and have used, the aforesaid information gathered as a result of the preparation by respondents and their representatives of their customers' income tax returns in the manner hereinabove described without the express consent of said customers, and respondents have failed to disclose such use and intended use to their customers.

PAR. 9. The aforesaid acts and practices of respondents, and the special relationship created by respondents with their customers as described in Paragraph Eight hereof, have had, and now have, the capacity and tendency to mislead respondents' customers into the erroneous and mistaken belief that the information they provided will only be used for the purpose of preparation of their income tax returns.

Therefore, the respondents' failure to disclose the use of the aforesaid information for purposes other than the preparation of their customers' tax returns is false, misleading and deceptive.

Furthermore, respondents' use of the aforesaid information for purposes other than the preparation of their customer's tax returns without the express consent of their customers is contrary to, and in substantial disregard of, the special relationship between respondents and their customers as described in Paragraph Eight hereof, and is, and was, unfair.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents and their representatives have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 11. The use by respondents and their representatives of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' and their representatives'

income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents and their representatives as herein alleged, were and are all to the prejudice and injury of the public and of respondents' and their representatives' competitors and constituted and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tax Corporation of America (Maryland) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2441 Honolulu Street, Montrose, Calif.

Respondent Tax Corporation of America (Delaware) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2441 Honolulu St., Montrose, Calif. It is a wholly-owned

subsidiary of, and is managed, directed and controlled by, respondent Tax Corporation of America (Maryland).

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Tax Corporation of America (Maryland), and Tax Corporation of America (Delaware) their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary or other device, in connection with the preparation of income tax returns or the offering for sale and sale of insurance, mutual funds or any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

2. Representing, directly or by implication, that respondents will reimburse their customers for any payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payments result from an error by respondents in the preparation of the tax return; *Provided, however,* Nothing herein shall prevent truthful representations that respondents will reimburse their customers for interest or penalty payments resulting from respondents' errors.

3. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not assume the liability for additional taxes assessed against the taxpayer; *Provided, however,* That it shall be a defense in any enforcement proceeding for respondents to establish that they make such deficiency payments.

4. Representing, directly or by implication, that respondents will provide legal representation to customers whose tax returns may be audited; or misrepresenting, in any manner, the type or manner of assistance provided by respondents to customers whose tax returns may be audited; *Provided, however,* Nothing contained herein shall prevent truthful representations of the type or manner of assistance that respondents will provide to customers whose returns may be audited.

5. Representing, directly or by implication, the amount, or the number, or the percentage of respondents' tax preparation customers who have saved more than the amount of the fee charged by respondents and/or their representatives by having respondents prepare their tax returns; *Provided, however*, Nothing herein shall prevent truthful and substantiated representations of the savings enjoyed by respondents' tax preparation customers.

6. Failing to disclose, clearly and conspicuously, at the initial time respondents or their representatives obtain information for the preparation of the customer's tax return, that respondents also are engaged in the business of offering for sale, and sale to the general public of mutual funds, lines of insurance, individual budgeting, bill paying services, and any and all other lines of business and/or services and that respondents send, from time to time, a newsletter discussing respondents' lines of business and/or services.

7. Using any information concerning any customer of respondents or respondents' representatives including the name and/or address of the customer, obtained as a result of the preparation of the customer's tax return for any purpose which is not essential or necessary to the preparation of said tax return, without clearly and conspicuously disclosing to the customer, prior to the obtaining of any information relative to the preparation of the tax return, that respondents intend to use the information for purposes other than the preparation of the customer's return, the exact information which will be used, the particular use which will be made of such information and a description of the parties or entities to whom the information will be made available; *Provided, however*, That nothing herein shall prohibit respondents from using names and addresses only of customers for the purposes of communication with such customers solely concerning respondents' income tax preparation business.

8. Failing to provide each customer in instances where the information described in paragraph 7 hereof will be used for any purpose other than the preparation of the tax return, with a form to be signed by the customer prior to the obtaining of any such information clearly stating that respondents intend to use the information for purposes other than the preparation of the return, the exact information to be used, the particular use to be made of such information, a description of the parties or entities to whom the information will be made available, and a statement that the customer consents to the use of such information.

Nothing in the above provisions is intended to relieve respondents of any further requirements imposed on them by the Revenue Act of

1971, Pub. L. 92-178, title III, §316(a), Dec. 10, 1971; 26 U.S.C. §7216 or regulations issued pursuant to it.

It is further ordered, That:

(a) respondents herein deliver a copy of this decision and order to each of their present and future representatives and any other persons, partnerships or corporations authorized by respondents to engage in the commercial preparation of income tax returns.

(b) respondents inform each such person so described in paragraph (a) above that respondents are obligated by the terms of this order to notify the Commission of those persons, partnerships or corporations whom respondents have actual knowledge that they have continued on their own the deceptive practices prohibited by this order.

(c) respondents inform each such person or party so described in paragraph (a) that the respondents are obligated by this order to discontinue the authorization of persons or parties who continue on their own the deceptive acts or practices prohibited by this order.

It is further ordered, That respondents herein shall, within sixty (60) days after service of this order, include on the front page of the respondents' newsletter to be sent to the last known address of each of their tax preparation customers and customers of their representatives for the most recent past year, clearly and accurately explaining (1) the terms, conditions and limitations of respondents' policy regarding their responsibility for, or obligation resulting from errors attributable to respondents in preparation of tax returns; and (2) the type or manner of assistance provided by respondents to customers whose returns may be audited.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents herein shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent corporations which may affect compliance obligation arising out of this order.

Complaint

85 F.T.C.

IN THE MATTER OF

ROBERT N. BARNES T/A NATIONAL CREDIT
EXCHANGE, ETC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS*Docket C-2646. Complaint, Mar. 10, 1975 - Decision, Mar. 10, 1975*

Consent order requiring a Canton, Ill., consumer credit reporting agency, among other things to cease violating the Fair Credit Reporting Act by furnishing credit reports to persons who do not have permissible purpose for receiving such information.

Appearances

For the Commission: *David G. Grimes, Jr. and Ronald G. McCauley.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Robert N. Barnes, an individual, trading and doing business as National Credit Exchange and National Fraudulent Check Bureau, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Robert N. Barnes is an individual trading and doing business as National Credit Exchange and National Fraudulent Check Bureau, with his office and principal place of business located at 445 W. Elm St., Canton, Ill.

PAR. 2. Subsequent to Apr. 25, 1971, in the ordinary course and conduct of his business, respondent has compiled and published lists containing, among other things, the names and addresses of consumers together with statements or indications that such consumers have outstanding unpaid bills, or together with statements or indications that such consumers have issued forged checks, checks drawn upon nonexistent accounts, or checks which have been returned by the drawee bank because of insufficient funds or other reasons.

The information contained in the aforesaid lists concerning consumers whose names and addresses appear therein bears on said consumers' credit worthiness, credit standing, credit capacity, charac-