

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. _____

MATTHEW ADEGBITE,
MAS & ASSOCIATES, CPA, LLC, and
MATHEW A. ADEGBITE, CPA, PC,

Defendants.

_____ /

COMPLAINT FOR INJUNCTIVE RELIEF

The plaintiff, United States of America, alleges as follows for its complaint to enjoin Matthew Adebite, individually, and his companies, MAS & Associates, CPA, LLC and Mathew A. Adebite, CPA, PC, from preparing tax returns in violation of the internal revenue laws.

1. The United States of America seeks to permanently enjoin the defendants from:
 - (a) preparing, assisting in the preparation of, or directing the preparation of federal income tax returns, amended returns, or other tax-related documents and forms, including any electronically-submitted tax returns or tax-related documents, for any entity or person other than himself;
 - (b) engaging in activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700, and 6701; and
 - (c) engaging in conduct that substantially interferes with the proper administration and enforcement of the tax laws.

2. This action is authorized and requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury of the United States, and is commenced at the direction of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7401, 7402, 7407, and 7408.

Jurisdiction and Venue

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

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 26 U.S.C. § 7407(a) because Adegbite resides within this judicial district, prepares tax returns within this judicial district, and a substantial part of the events giving rise to this claim occurred within this judicial district.

Summary of Adegbite's Activities

5. Adegbite operates his tax preparation business out of an office in Tucker, Georgia. He was an accountant in Nigeria prior to immigrating to the United States in 1993. He graduated from Georgia State University in 1998 and became a licensed certified public accountant (CPA) in 1999. Adegbite is the sole owner of the two entities – MAS & Associates, CPA, LLC and Mathew A. Adegbite, CPA, PC – through which he prepares tax returns.

6. Adegbite is currently operating his tax preparation business and is preparing Individual Income Tax Returns (Form 1040) for other taxpayers for the current tax year.

7. Since at least 2008, income tax returns prepared by Adegbite have understated the filing taxpayer's liability by creating or inflating deductions, or falsely claiming credits.

8. In 2009, Adegbite prepared returns that falsely claim that the taxpayer purchased a home and was entitled to a First Time Home Buyer Credit (FTHBC). The FTHBC allows a first time homebuyer to claim a credit against their federal income tax equal to ten percent of the home's purchase or \$8,000, whichever is less. For the 2008 tax year, Adegbite claimed the \$8,000 FTHBC on approximately 64 returns, using false real estate closing documents and taxpayer information provided by Francis Bongay. This resulted in erroneous refund claims exceeding \$500,000 in the aggregate. The IRS was able to halt payment on approximately half of the FTHBC refund claims before they were issued, for an estimated loss of \$271,000. According to Adegbite, the refund checks were sent directly to Bongay, who kept the proceeds.

9. In addition to improper FTHBC claims, Adegbite prepares returns that fabricate losses claimed on Schedule C – Profit or Loss from Business. In some cases, the Schedule C reports fabricated business expenses for fictitious businesses, while on others, the business expenses were grossly exaggerated. This resulted in fake or overstated losses that significantly reduced the tax that Adegbite reported for his clients.

10. In interviews with IRS investigators, clients of Adegbite who claimed Schedule C deductions stated that they either never incurred the business expenses reported on their returns, or that the claimed business expenses were inflated. According to those clients, they were unaware of the fabricated or exaggerated deductions, and did not ask Adegbite to claim those on their returns.

11. IRS records show that from 2008 to 2011, Adegbite prepared approximately 1500 tax returns which were filed under his electronic filing identification number (EFIN) as follows:

Processing Year*	1040 Returns Filed by Adegbite	Number and Percentage of Returns with Schedule C Losses Claimed		Number and Percentage of Returns with Earned Income Tax Credit		Percentage of Returns with Refunds
		Number	Percentage	Number	Percentage	
2008	379	121	32%	205	54%	82%
2009	399	172	43%	243	61%	91%
2010	408	200	49%	277	68%	91%
2011	307	43	14%	157	51%	83%

*Processing Year refers to the year in which returns were received by the IRS, not the tax year to which the returns pertain.

12. To date, the IRS has completed examinations of more than 285 returns prepared by Adegbite. Of those returns, the IRS assessed additional taxes exceeding \$1 million dollars and determined an average deficiency per return of more than \$3,500.

Examples of Adegbite Fraudulent Schemes

13. The plaintiff re-alleges the allegations of paragraphs 1-12.

14. The returns described below demonstrate the schemes employed by Adegbite on hundreds of returns he has prepared for taxpayers.

False tax returns claiming First Time Home Buyer Credit

15. In 2009, Adegbite prepared dozens of returns for the 2008 tax year which falsely claimed a FTHBC. Adegbite admitted to IRS agents that he prepared tax returns claiming the FTHBD using personal information of taxpayers he never met that was provided by Francis Bongay. For example, Adegbite prepared fake returns under the surnames of Rushing,

Hallowell, Kanu and Utsey,¹ which listed no wages and de minimis gross receipts from non-existent businesses Adegbite just invented. All the returns listed the taxpayers' address as Francis Bongay's Atlanta address, and that is where the refund checks were sent.

16. Two of the above-referenced fake returns claimed refunds of \$8,033 and three returns claimed refunds of \$8,000. None of the taxpayers actually purchased a home as claimed. Adegbite admitted that he prepared the returns with the intent to split the proceeds of the refunds with Francis Bongay.

Tax returns prepared for Camoy C. Allen

17. Adegbite prepared Form 1040 individual tax returns for Camoy C. Allen for the years 2009, 2010 and 2011. Allen had no knowledge of his income reporting and tax return obligations and was referred to Adegbite by a friend.

18. Allen was a part-time college student living at home with his parents and teenage sister during the years under examination. In addition to pursuing his education, Allen performed jobs and was paid in cash. He did not own or operate a business.

19. Allen did not provide any documentation to Adegbite or tell him how much he earned in 2009, 2010, or 2011, as he did not know how much he was paid. Allen does not know how the figures reported on his returns were calculated or determined, and Adegbite did not explain the tax returns to him.

¹ The full names on the returns are being withheld to protect the identity of these individuals, whose information appears to have been misappropriated by Adegbite and Bongay without their knowledge.

20. As summarized in the below table, Allen's 2009 through 2011 tax returns, as prepared by Adegbite, also claimed the improper exemptions for dependents, fabricated deductions and fraudulently claimed credits, which the IRS disallowed:

Tax Year	Dependent Exemption	Education Credits	Earned Income Tax Credit	Office Expense	Add'l Child Credit
2009	\$3,650	\$400	\$3,043	\$289	\$966
2010	\$3,650	\$400	\$2,270		\$553
2011	\$3,700	\$880	\$2,814		

21. Allen was not entitled to the credits and deductions in the table above, nor did he provide any information to Adegbite to suggest otherwise.

22. Allen was not entitled to and did not claim he was entitled to a Dependent Exemption for his younger sister, a high school student, who lived at home and was supported by their parents. Adegbite falsely claimed this exemption on Allen's return on his own volition.

23. Allen presented Adegbite with no documents to support the Hope Scholarship and Lifetime Earning Credits or the American Opportunity Education Credits that Adegbite claimed on his behalf.

24. Allen did not own or operate a business in any of the tax years for which Adegbite prepared returns. Adegbite made up out of whole cloth a bogus business he listed as Facility Support Services to falsely claim the Earned Income Tax Credit and the fabricated office expenses.

25. Lastly, Adegbite prepared returns that reflected in 2009 and 2010 that Allen was eligible for an Form 8812 Additional Child Tax Credit, a refundable credit intended to provide a

credit to parents whose Child Tax Credit is limited by their income tax liability. However, Allen had no children when the returns were filed. The credits were simply fabricated by Adegbite.

26. Allen was interviewed by the IRS and admitted he did not incur the expenses Adegbite included on his returns and confirmed that he was not entitled to the credits Adegbite claimed on his behalf.

27. Corrections to Allen's income tax returns resulted in an increase in tax of \$2,974 for 2009; \$2,207 for 2010; and \$2,602 for 2011.

Tax returns prepared for Emmanuel and Chijiamara Kalu

28. Adegbite prepared a Form 1040 joint tax return for Emmanuel and Chijiamara Kalu for 2008 and 2009. Mr. Kalu became aware of Adegbite through a flier in his mailbox at his apartment complex.

29. Mr. Kalu was employed as an accountant, and his primary income is reflected on his Form W-2s as wages from his employer. He did not own or operate a business or incur the expenses Adegbite listed in Schedule C. Mrs. Kalu occasionally braided hair from their apartment for pay. This income was included in a Schedule C prepared by Adegbite. However, the Kalus did not incur the expenses Adegbite reported for a beauty salon business attributed to Mr. Kalu. In 2009, Adegbite prepared an additional false Schedule C for a general merchandise store attributed to Mr. Kalu.

30. The Kalus' 2008 and 2009 tax returns prepared by Adegbite claimed the following false or fraudulent expenses and credits, that the Kalus were not entitled to claim and that the IRS disallowed after audit:

Tax Year	Schedule C Business Expenses	Education Credits	Earned Income Tax Credit	Additional Child Credit
2008	\$13,483		\$720	\$1,964
2009	\$22,326	\$342	\$1,626	\$2,000

31. The above-referenced Schedule C forms falsely claimed the existence of a beauty salon and a general merchandise store. The Schedule C forms claimed that these nonexistent businesses incurred losses in 2008 and 2009. The false expenses listed on the fraudulent Schedule C forms that resulted in the “losses” included expenses for meals, supplies, insurance, repairs, cell phones and gasoline. These fake losses claimed on their Schedule C forms reduced the Kalus’ taxable income and generated erroneous refunds to the Kalus in both years.

32. Mr. Kalu was interviewed by the IRS and agreed that the credits and deductions on the returns were in error.

33. Corrections to the Kalus’ joint income tax returns resulted in an increase in tax of \$2,878 for 2008; and \$4,900 for 2009.

Harm to the United States

34. Adebite has caused harm to the United States by creating substantial revenue losses through understating the liabilities on the returns he prepares through the schemes described above.

35. In addition, Adebite’s actions have forced the United States to expend significant resources to examine and correct the returns he prepared.

36. In many instances, Adegbite's clients had taxes withheld during the reporting years and Adegbite's understatement of those clients' liabilities caused the United States to issue refunds that the clients were not entitled to receive.

37. Based on the returns it has examined from the 2008 through 2011 processing years, the IRS estimates that the United States has lost millions of dollars from the understatement of liabilities on returns filed by Adegbite. This estimate does not include the substantial cost of examining the returns and collecting the understated liabilities.

COUNT I
INJUNCTION UNDER 26 U.S.C. § 7407
FOR CONDUCT SUBJECT TO PENALTY UNDER 26 U.S.C. §§ 6694 AND 6695

38. The United States incorporates by reference the allegations in paragraphs 1 through 37.

39. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a person who is a tax return preparer from engaging in certain prohibited conduct or from further acting as a tax return preparer. The prohibited conduct justifying an injunction includes, inter alia, the following:

(a) Engaging in conduct subject to penalty under 26 U.S.C. § 6694, which penalizes a tax return preparer who prepares a return that contains an understatement of tax liability or an overstatement of a refund due to an unreasonable position that the return preparer knew or should have known was unreasonable; and

(b) Engaging in any other fraudulent or deceptive conduct which substantially interferes with the proper administrations of the Internal Revenue laws.

40. In order for a court to issue such an injunction, the court must find that:

- (a) The tax return preparer engaged in the prohibited conduct; and
- (b) Injunctive relief is appropriate to prevent the recurrence of such conduct.

41. If a tax return preparer's conduct is continual or repeated and the court finds that a narrower injunction would not be sufficient to prevent the preparer's interference with the proper administration of the internal revenue laws, the court may permanently enjoin the person from acting as a tax return preparer. *See* 26 U.S.C. § 7407(b).

42. Adegbite has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns that understate the filers' tax liabilities and overstate their refunds based on unreasonable and reckless positions. As described above, Adegbite prepares returns that claim deductions for expenses that were not incurred by the taxpayer and credits to which the taxpayer is not entitled. Adegbite did so with the knowledge that the positions he took on the returns were unreasonable and lacked substantial authority. Adegbite has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).

43. Additionally, Adegbite engaged in conduct subject to penalty under 26 U.S.C. § 6694(b) by willfully understating his customers' liability and acting with a reckless and intentional disregard of rules and regulations.

44. Adegbite has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6695(a) by failing to furnish a copy of the return to the taxpayer as required by 26 U.S.C. § 6107(a).

45. Adegbite continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6695(b) by failing to properly identify himself and sign returns he prepared.

46. Adegbite has continually and repeatedly engaged in conduct that violates 26 U.S.C. §§ 6694 and 6695 and which substantially interferes with the administration of the internal revenue laws. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Adegbite is likely to continue preparing false federal income tax returns.

47. Adegbite continues to recruit clients and prepare returns.

48. A narrower injunction would be insufficient to prevent Adegbite's interference with the administration of the federal tax laws. Adegbite prepares returns understating the filer's liability through multiple schemes, provides false information to the taxpayers named on the returns, and uses false names to file the returns. In addition, the IRS may not yet have identified all of the schemes used by Adegbite to understate income. Failure to permanently enjoin Adegbite will require the IRS to spend additional resources to uncover all of Adegbite's future schemes. The harm resulting from these schemes includes both the expenditures of these resources and the revenue loss caused by the improper deductions and credits Adegbite claims on returns he prepares. Accordingly, only a permanent injunction is sufficient to prevent future harm. Adegbite should be permanently enjoined from acting as a tax return preparer.

**COUNT II:
INJUNCTION UNDER 26 U.S.C. § 7408
FOR CONDUCT SUBJECT TO PENALTY UNDER 26 U.S.C. § 6701**

49. The United States incorporates by reference the allegations contained in paragraphs 1 through 48.

50. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under 26 U.S.C. § 6701, which penalizes

a person who aids or assists in the preparation of tax returns that the person knows will result in an understatement of tax liability.

51. Adebite has engaged in conduct subject to penalty under 26 U.S.C. § 6701 by preparing or directing the preparation of income tax returns that claim credits he knew that the taxpayer was not eligible to take, and by preparing returns that claim deductions he knew to be false or inflated.

52. Adebite's repeated actions such as those described in paragraphs 18 through 50, above, fall within 26 U.S.C. § 7408(c)(1), and injunctive relief is appropriate to prevent recurrence of this conduct.

53. Accordingly, Adebite should be permanently enjoined from preparing any returns that improperly claim or inflate a claim to the education credit or claim false or inflated deductions.

**COUNT III:
INJUNCTION UNDER 26 U.S.C. §7402 FOR UNLAWFUL
INTERFERENCE WITH THE ENFORCEMENT OF INTERNAL REVENUE LAWS**

54. The United States incorporates by reference the allegations contained in paragraphs 1 through 53.

55. Section 7402(a) of the Internal Revenue Code authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of internal revenue laws.

56. Adebite has repeatedly and continually engaged in conduct that interferes substantially with the administration and enforcement of internal revenue laws.

57. If Adebite continues to act as a tax return preparer, his conduct will result in irreparable harm to the United States, and the United States has no adequate remedy at law.

58. Adegbite's conduct has caused and will continue to cause substantial tax losses to the United States Treasury, much of which may be undiscovered and unrecoverable. Moreover unless Adegbite is enjoined from preparing returns, the IRS will have to devote substantial and unrecoverable time and resources auditing his clients individually to detect false, fraudulent, or overstated refund claims in future returns.

59. The detection and audit of erroneous tax credits and deductions claimed on returns prepared by Adegbite will be a significant burden on IRS resources.

WHEREFORE, the plaintiff, the United States of America, respectfully prays for the following:

A. That the Court find that Matthew Adegbite has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and that injunctive relief is appropriate under 26 U.S.C. § 7407 to prevent recurrence of that conduct;

B. That the Court find that Adegbite has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. § 6701 and that injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent recurrence of that conduct;

C. That the Court find that Adegbite has repeatedly and continually engaged in conduct that substantially interferes with the proper enforcement and administration of the internal revenue laws, and that injunctive relief against Adegbite is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7402(a);

D. That the Court enter a permanent injunction prohibiting Adegbite or any other person working in concert or participation with him from directly or indirectly:

(1) preparing, assisting in the preparation of, or directing the preparation of federal income tax returns, amended returns, or other tax-related documents and forms, including any electronically-submitted tax returns or tax-related documents, for any entity or person other than himself;

(2) engaging in activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700, and 6701; and

(3) engaging in conduct that substantially interferes with the proper administration and enforcement of the tax laws;

E. That the Court enter an injunction requiring Adegbite:

(1) At his own expense, to send by certified mail, return receipt requested, a copy of the final injunction entered against him in this action, as well as a copy of the Complaint setting forth the allegations as to how Adegbite fraudulently prepared federal income tax returns, to each person for whom he prepared federal income tax returns or any other federal tax forms after January 1, 2008;

(2) To turn over to the United States copies of all returns or claims for refund that he prepared after January 1, 2008;

(3) To turn over to the United States a list with the name, address, telephone number, email address, and social security number or other taxpayer identification number of all customers for whom he prepared returns after January 1, 2008;

(4) To file a sworn statement with the Court evidencing his compliance with the foregoing directives within forty-five (45) days of entry of the final injunction in this action; and

(5) To keep records of his compliance with the foregoing directives, which may be produced to the Court, if requested, or the United States pursuant to paragraph F, below;

F. That the Court enter an order allowing the United States to monitor Adebite's compliance with the injunction, and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

G. That the Court grant the United States such other and further relief as the Court deems appropriate.

Dated: May 29, 2013

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General

By: /s/ Valerie G. Preiss
VALERIE G. PREISS
Trial Attorney, Tax Division
Department of Justice
P.O. Box 14198
Washington, DC 20044
Telephone: (202) 514-6475
Fax: (202) 514-9868
E-mail: valerie.g.preiss@usdoj.gov

Of Counsel:
SALLY QUILLIAN YATES
United States Attorney