

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

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 06-137
	)	
JERRY O. ADAMS, III	)	
	)	
Defendant.	)	

**COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF**

Plaintiff, the United States of America, for its complaint against Jerry O. Adams, III, (hereinafter “Adams”) states as follows:

**Jurisdiction and Venue**

1. This action is brought at the request and with the authorization of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7401 and 7407, to restrain and enjoin Adams from preparing federal income tax returns for others, engaging in any activity subject to penalty under 26 U.S.C. § 6694, 6695, or 6701, and engaging in conduct that substantially interferes with the administration and enforcement of the internal revenue laws.
2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402, and 7407.
3. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1396.
4. Plaintiff, the United States, is the sovereign.
5. The defendant, Jerry O. Adams, III, resides at 504 Stroud St., Shelby, N. C.,

within the jurisdiction of this court.

6. Beginning at least as early as 2001 and continuing to the present time, Adams has been preparing income tax returns for taxpayers.

7. During 2004 and 2005, Adams prepared income tax returns through a business called First Choice Tax Service in Shelby, North Carolina, and then arranged to have the returns electronically filed with the Internal Revenue Service.

8. During 2004, First Choice filed 884 income tax returns for the 2003 tax year.

9. During 2005, First Choice filed 330 income tax returns for the 2004 tax year.

#### **The IRS's Investigation of Adams**

10. The Internal Revenue Service conducted an investigation of Adams' tax preparation activities relating to the years 2004 and 2005.

11. The investigation determined that in preparing the tax returns, Adams overstated the amount of federal income tax withheld from wages, claimed excessive earned income credits, excessive education credits, and understated wages.

12. Adams prepared tax returns that understate the taxpayers' federal income tax liabilities by taking positions for which there was not a realistic possibility of being sustained on the merits. Adams knew or should have known that the positions taken could not be sustained on the merits and that the positions were frivolous.

13. Adams prepared income tax returns in which he failed to exercise due diligence in determining the taxpayer's eligibility for the earned income credit.

14. Adams prepared income tax returns and received compensation for these services,

but he did not sign such returns as the income tax return preparer.

15. Adams' return preparation activities interfere with the administration and enforcement of the internal revenue laws by the Internal Revenue Service.

16. It is appropriate to enjoin Adams' conduct because he aided, assisted, procured or advised taxpayers with respect to the preparation of a portion of their Federal income tax returns when he knew or had reason to believe that the portion of their Federal income tax returns would be used in connection with a material matter arising under the Federal tax laws, and Adams knew that the portion would result in a material understatement of the taxpayers' Federal income tax liabilities.

17. Because Adams understated income tax liabilities of his customers due to unrealistic positions, because he willfully attempted to understate tax liabilities, because he acted in reckless disregard for the Internal Revenue laws, and because he did not sign returns as the return preparer even though he had prepared the returns and accepted compensation for such services, Adams has engaged in conduct subject to penalties under 26 U.S.C. §§ 6694 and 6695.

**Adams' Return-Preparation Has Caused  
More than an Estimated \$ 2.6 Million Harm to the Treasury**

18. During 2004 and 2005, Adams continually and repeatedly prepared federal income tax returns which overstated the amount of refunds due to his customers.

19. According to the IRS's records, First Choice prepared 884 income tax returns for the 2003 tax year.

20. The Internal Revenue Service analyzed a sample of 28 of the 884 returns, and compared amounts on the returns with information provided to the Service by third-parties such

as Form W-2 statements containing wage and tax withholding information, records of non-wage income paid to taxpayers, and records of mortgage interest paid. Overstated refunds attributed to the 28 returns totaled \$61,728, which is an average of \$2,286 per return.

21. If all of the 884 returns prepared by Adams in 2004 contain similar errors, the harm to the United States caused by Adams' return preparation is over \$2 million for that year.

22. According to the IRS's records, First Choice prepared 330 income tax returns for the 2004 tax year.

23. The Internal Revenue Service analyzed a sample of 28 of the 330 returns, and compared amounts reported on the returns with information provided to the Service by third-parties such as Form W-2 statements containing wage and tax withholding information, records of non-wage income paid to taxpayers, and records of mortgage interest paid. Overstated refunds attributed to these 28 returns totaled \$52,260, which is an average of \$1,866 per return.

24. If all of the 330 returns prepared by Adams in 2005 contain similar errors, the harm to the United States caused by Adams' return preparation is over \$600,000.

25. The harm to the Government will increase if Adams is not immediately enjoined because the 2005 return-filing season has begun.

26. The harm to the Government is also manifested by the many hours already spent by IRS employees in reviewing Adams-prepared tax returns and interviewing his customers, which is needed to determine whether or not the customers were entitled to the refunds reported on the tax returns. This harm to the Government will continue as the Internal Revenue Service continues to investigate Adams' customers and to assess and collect additional

taxes owed.

### **Count I**

#### **Injunction under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701**

27. The United States incorporates by reference the allegations in paragraphs 1 through 26.

28. Section 7408 of 26 U.S.C. authorizes a court to enjoin persons who have engaged in conduct subject to penalty under 26 U.S.C. § 6701 from engaging in further such conduct. Section 6701 imposes a penalty on any person who aids in the preparation of any portion of a return or other document, who knows the portion or document will be used in connection with any material matter under the internal revenue laws, and who knows the portion or document (if so used) would result in understating another person's tax liability.

29. Adams prepared tax returns and assisted in preparing tax returns and other documents for customers that were intended to be used (and were used) in connection with material matters arising under the internal revenue laws.

30. Adams knew that these returns and other documents (if so used) would result in understatements of customers' tax liabilities. Adams thus engaged in conduct subject to penalty under 26 U.S.C. § 6701.

### **Count II**

#### **Return-preparer injunction under 26 U.S.C. § 7407**

31. The United States incorporates by reference the allegations in paragraphs 1 through 30.

32. 26 U.S.C. § 7407 authorizes a court to enjoin a person from (among other things):

- engaging in conduct subject to penalty under 26 U.S.C. § 6694 (which penalizes a return preparer who prepares or submits a return that contains an unrealistic position); and
- engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

If the return preparer's misconduct is continual or repeated and the Court finds that a narrower injunction (*i.e.*, prohibiting only specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of federal tax laws, the Court may enjoin the person from further acting as a return preparer.

33. Adams has continually and repeatedly prepared and filed federal income tax returns that contain unrealistic positions, conduct that is subject to penalty under 26 U.S.C § 6694.

34. Adams has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

### **Count III**

#### **(Unlawful Interference with the Enforcement of the Internal Revenue Laws)**

35. The United States incorporates by reference paragraphs 1 through 55.

36. Through the conduct described above, Adams has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Unless enjoined by this Court, Adams is likely to continue to engage in such conduct. Adams' conduct is causing irreparable injury to the United States, and the United States has no adequate remedy at law:

- a. Adams' conduct, unless enjoined, is likely to cause a substantial loss of revenue to the United States Treasury. Unless Adams is enjoined the IRS will have to expend substantial time and resources to detect future

customers' returns with substantial understatements, and may be unable to detect all of them.

- b. The detection and audit of returns filed by Adams' customers will place a serious burden on the IRS's resources.
- c. If Adams is not enjoined, he likely will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701 that substantially interferes with the enforcement of the internal revenue laws.

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

- A. That the Court find that Adams has engaged in repeated and continual conduct subject to penalty under 26 U.S.C. § 6694, and that injunctive relief is appropriate under 26 U.S.C. § 7407 to bar Adams from acting as a income-tax-return preparer;
- B. That the Court find that Adams 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 him from engaging in further such conduct;
- C. That the Court find that Adams engaged in conduct that interferes with the enforcement of the internal revenue laws and substantially interferes with the proper administration of the internal revenue laws, and that injunctive relief against them is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. §§ 7407 and 7402(a);
- D. That the Court, under 26 U.S.C. § 7407, enter a permanent injunction permanently barring Adams from acting as a federal income tax return preparer;

- E. That the Court, under 26 U.S.C. §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting Adams and his representatives, agents, servants, employees, attorneys, independent contractors, and those persons in active concert or participation with him, from directly or indirectly:
- (1) engaging in any conduct subject to penalty under 26 U.S.C. § 6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;
  - (2) acting as a federal-income-tax return preparer;
  - (3) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
  - (4) engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, assisting or advising others with respect to the preparation of any tax returns, forms, or other documents to be used in connection with any material matter arising under the internal revenue laws knowing they will (if so used) result in the understatement of another person's tax liability; and
- F. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring Adams to contact all persons and entities for whom he prepared any federal income tax returns or other tax-related documents after January 1, 2000, and inform those persons of the entry of the Court's findings concerning the falsity of representations made by Adams on their tax returns, and that a permanent injunction has been entered against Adams.
- G. That the Court, under 26 U.S.C. § 7402, enter an injunction requiring Adams to turn over to the United States a list of the names, addresses, e-mail addresses, phone numbers, and Social Security numbers of all individuals or entities for whom Adams prepared or assisted in the preparation of any tax-related documents, including claims for refund or tax returns since January 1, 2000.



- H. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction; and
- I. That this Court grant the United States such other relief, including costs, as is just and equitable.

Dated: March 8, 2006

GRETCHEN C. F. SHAPPERT  
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