

STATE OF WISCONSIN

Plaintiff,

-vs-

DA Case No.: 2011WK006821

Assigned DA/ADA: Lesli S. Boese

Agency Case No.:

Michael L Gengler
S85 W30643 Stonegate Drive
Mukwonago, WI 53149

Court Case No.:

ATN:

DOB: 10/29/1974

Sex/Race: M/W

Eye Color: Green

Hair Color: Brown

Height: 5 ft 9 in

Weight: 170 lbs

Alias:

Criminal Complaint

Defendant,

Vern Barnes, Special Agent with the Wisconsin Department of Revenue Criminal Investigation Section, being first duly sworn on oath, upon information and belief, states that:

Count 1: FRAUD/RENDERING INCOME TAX RETURN, REPEATER

The above-named defendant on or about Friday, May 06, 2011, at S86 W30643 Stonegate Drive, in the Town of Mukwonago, Waukesha County, Wisconsin, the defendant did, being a person, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by Chapter 71 for the tax year 2005, contrary to sec. 71.83(2)(b)1, 939.50(3)(h), 939.62(1)(b) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both and maybe assessed the cost of prosecution.

And further, invoking the provisions of sec. 939.62(1)(b) Wis. Stats.; because the defendant is a repeater, having been convicted of three counts of fail/file income tax return, contrary to Section 71.83(2)(a)1, Misdemeanors, on November 2, 2009 in Waukesha County case number 2008CM2977, which conviction(s) remain of record and unreversed, the maximum term of imprisonment for the underlying crime may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

Count 2: FRAUD/RENDERING INCOME TAX RETURN, REPEATER

The above-named defendant on or about Friday, May 06, 2011, at S86 W30643 Stonegate Drive, in the Town of Mukwonago, Waukesha County, Wisconsin, the defendant did, being a person, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by Chapter 71 for the tax year 2006, contrary to sec. 71.83(2)(b)1, 939.50(3)(h), 939.62(1)(b) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both and maybe assessed the cost of prosecution.

And further, invoking the provisions of sec. 939.62(1)(b) Wis. Stats., because the defendant is a repeater, having been convicted of three counts of fail/file income tax return, contrary to Section 71.83(2)(a)1, Misdemeanors, on November 2, 2009 in Waukesha County case number 2008CM2977, which conviction(s) remain of record and unreversed, the maximum term of imprisonment for the

underlying crime may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

Count 3: FRAUD/RENDERING INCOME TAX RETURN, REPEATER

The above-named defendant on or about Friday, May 06, 2011, at S86 W30643 Stonegate Drive, in the Town of Mukwonago, Waukesha County, Wisconsin, the defendant did, being a person, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by Chapter 71 for the tax year 2007, contrary to sec. 71.83(2)(b)1, 939.50(3)(h), 939.62(1)(b) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both and maybe assessed the cost of prosecution.

And further, invoking the provisions of sec. 939.62(1)(b) Wis. Stats., because the defendant is a repeater, having been convicted of three counts of fail/file income tax return, contrary to Section 71.83(2)(a)1, Misdemeanors, on November 2, 2009 in Waukesha County case number 2008CM2977, which conviction(s) remain of record and unreversed, the maximum term of imprisonment for the underlying crime may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

Count 4: FRAUD/RENDERING INCOME TAX RETURN, REPEATER

The above-named defendant on or about Friday, May 06, 2011, at S86 W30643 Stonegate Drive, in the Town of Mukwonago, Waukesha County, Wisconsin, the defendant did, being a person, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by Chapter 71 for the tax year 2008, contrary to sec. 71.83(2)(b)1, 939.50(3)(h), 939.62(1)(b) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both and maybe assessed the cost of prosecution.

And further, invoking the provisions of sec. 939.62(1)(b) Wis. Stats., because the defendant is a repeater, having been convicted of three counts of fail/file income tax return, contrary to Section 71.83(2)(a)1, Misdemeanors, on November 2, 2009 in Waukesha County case number 2008CM2977, which conviction(s) remain of record and unreversed, the maximum term of imprisonment for the underlying crime may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

Count 5: FRAUD/RENDERING INCOME TAX RETURN, REPEATER

The above-named defendant on or about Friday, May 06, 2011, at S86 W30643 Stonegate Drive, in the Town of Mukwonago, Waukesha County, Wisconsin, the defendant did, being a person, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by Chapter 71 for the tax year 2009, contrary to sec. 71.83(2)(b)1, 939.50(3)(h), 939.62(1)(b) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both and maybe assessed the cost of prosecution.

And further, invoking the provisions of sec. 939.62(1)(b) Wis. Stats., because the defendant is a repeater, having been convicted of three counts of fail/file income tax return, contrary to Section 71.83(2)(a)1, Misdemeanors, on November 2, 2009 in Waukesha County case number 2008CM2977,

which conviction(s) remain of record and unreversed, the maximum term of imprisonment for the underlying crime may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

PROBABLE CAUSE:

And prays that the defendant be dealt with according to law; that the basis for complainant's charge of such offense is: based upon a review of the investigative reports of Vern Barnes, Special Agent with the Wisconsin Department of Revenue Criminal Investigation Section.

Your complainant indicates that prior to this date he had been investigating an individual identified as Michael L. Gengler, DOB: 10/29/1974, hereinafter referred to as the defendant for willful failure to file income tax returns for the tax years 2005, 2006 and 2007. The defendant was subsequently charged for failing to file state income tax returns for those years and on October 14, 2009, after a two day jury trial, the defendant was convicted of all three counts of willful failure to file income tax returns. On November 2, 2009, the defendant was sentenced and he was placed on probation and was ordered to file all past and future tax returns and pay all taxes previously owed.

Said reports further indicate that your complainant had contact with the defendant on January 7, 2011 and the defendant indicated that he was still working on gathering the information for the tax returns and that he had an accountant in Richfield who would be doing his tax returns. He stated he wanted to do all of his tax returns at one time instead of sending them in piece mail. He believed he would have everything done by the end of February, 2011. Your complainant further received a call from the defendant on March 25, 2011 who indicated that he hoped to have all returns done by April 15, 2011. On May 11, 2011, your complainant received a packet from the defendant consisting of State of Wisconsin Income Tax Returns for the years 2005, 2006, 2007, 2008, 2009 and 2010 along with a letter signed by the defendant in which he challenges his status as a tax payer with the Administrative Agency of the Internal Revenue Service.

In reviewing each of the year's tax returns, your complainant observed that the defendant entered zeros on every line of each return, in effect stating that he had no income and tax liability. Each of the returns are signed by the defendant and were dated May 6, 2011. The address on each of the tax returns does list the defendant's current address of S86 W30643 Stonegate Drive in the Town of Mukwonago, Waukesha County, Wisconsin. He also lists his name alone, and not his wife, and lists his social security number. Each return that was filed was on Wisconsin Form 1A or the "short" form.

Said reports further indicate that during this investigation, your complainant observed that the defendant worked at Klockner KHS in Waukesha, Wisconsin as an electrical engineer from 1999 through 2007 and he did receive a wage. The defendant changed his withholding status on December 20, 2002 and claimed to be exempt from withholding. By claiming this, the defendant had very little taxes withheld from his salary from his employer. Your complainant was able to determine that the defendant had income from Klockner KHS in the amount of \$88,988.00 in 2005. In 2006, the defendant had wages from Klockner KHS in the amount of \$89,649.00. Further, in 2007, the defendant had wages from Klockner KHS in the amount of \$102,969.00. Those are the amounts that were reported by Klockner KHS to the government as reportable income and those are the amounts that the defendant needed to report on his income tax returns.

Said reports further indicate that your complainant discovered that the defendant left Klockner KHS in December, 2007 and began working for K2 Engineering Group which is located in Big Bend, Wisconsin. The managing partners for this business are Edward Stefaniak and Erik With. Your

complainant had the opportunity to speak with Stefaniak who stated that the defendant first started working at K2 as an independent contractor in 2008. Then from, November, 2009 through August, 2010 he worked for them as an employee and after August, 2010, the defendant went back to an independent contractor status. In reviewing the documents provided by K2, your complainant knows that when the defendant was an independent contractor for K2, K2 would not have been obligated to have the defendant fill out a federal form W-4 or withhold income taxes from payments made to him. With did supply your complainant with all the records showing payments made to the defendant in 2008 and 2009. These payments were made to the defendant as non-employee compensation with some of the payments including travel expenses that the defendant was reimbursed for. For the 2008 tax year, K2 Engineering Group provided the defendant a 1099 for the amount of \$92,807.00, all of which would have been taxable income. Further, for the tax year 2009, K2 Engineering Group provided a 1099 to the defendant for non-employee compensation in the amount of \$76,692.00 and the defendant was provided for the tax year 2009 wage information indicating that he was an employee for K2 Engineering Group and earned \$16,768.00. Further, for the tax year 2009, information from the Internal Revenue Service, which your complainant has relied upon in the past and believes to be truthful and reliable, showed that the defendant received \$49,992.00 from Fidelity Investments and this was reported to the Internal Revenue Service on form 1099R with a distribution code of one. A 1099R is used to report distributions from pensions, annuities, retirement plans or profit sharing plans. The distribution code of one indicates that it is a premature taxable distribution that maybe subject to an additional ten percent tax. The 1099R indicates that the taxable amount of the distribution is \$49,992.00. Therefore, for the tax year 2009, the defendant had taxable income of \$143,452.00.

In calculating taxable income for each tax year as well as the tax due for each tax year, your complainant noted that the defendant did not indicate his filing status in his returns but based upon his name being the only name on the returns, your complainant gave him a filing status of single or head of household. The tax rate on this filing status is slightly lower than if he filed as "married filing separately". Further, the defendant did not claim any deductions for exemptions or property tax credits in the returns, as filed. Therefore in reviewing the wages in 1099s that were provided to the defendant, for the tax year 2005 the defendant had taxable income of \$88,988.00, he had a tax due of \$5,583.00 and he had income taxes withheld by his employer of \$377.00. Therefore, the taxes evaded for the tax year 2005 were \$5,206.00.

Said reports further indicate that in reviewing the tax year 2006, the defendant had \$89,649.00 in taxable income, therefore the tax due to the State of Wisconsin would be \$5,621.00 and the defendant had no taxes withheld by his employer. Therefore, the taxes evaded was \$5,621.00.

For the tax year 2007, the defendant had taxable income of \$102,969.00 and your complainant calculated the tax due to the State of Wisconsin being \$6,478.00. The defendant had no income taxes withheld by his employer and therefore the taxes evaded was \$6,478.00.

Said reports further indicate that for the tax year 2008, the defendant had \$92,807.00 in taxable income and your complainant calculated the tax due to the State of Wisconsin as being \$5,817.00. There was no money withheld from the defendant's employer and therefore the taxes evaded for the tax year 2008 was \$5,817.00.

Your complainant has reviewed the documents for the defendant for the tax year 2009 and determined that the defendant had taxable income for 2009 of \$143,452.00. In calculating the tax due to the State of Wisconsin your complainant calculated that the defendant owed \$9,094.00 in

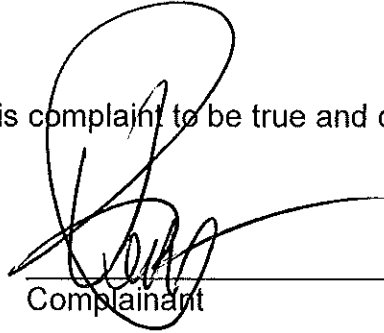
STATE OF WISCONSIN - VS - Michael L Gengler

taxes to the State of Wisconsin. The defendant did have \$1,047.00 withheld from his employer and therefore the taxes evaded for that year are \$8,047.00.

The total taxes evaded for the tax years 2005 through tax year 2009 was \$31,169.00 not including any interest or penalty fees.

Your complainant further indicates that he believes based upon his investigation that the defendant has continued to be a full time resident of the State of Wisconsin and has lived in Waukesha County for the tax years 2005, 2006, 2007, 2008 and 2009.


Based on the foregoing, the complainant believes this complaint to be true and correct.



Complainant

Subscribed and sworn to before me,
and approved for filing on:

this 6th day of January, 2012



Assistant/Deputy/District Attorney
State Bar # 1024374

LSB/tt

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