

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2015-CF-_____

MICHAEL SPAHR
13795 W. Deer Park Dr.
New Berlin, WI 53151

Defendant.

CRIMINAL COMPLAINT

Complainant, being duly sworn on oath, states as follows:

COUNT 1: EMBEZZLEMENT- THEFT BY TRUSTEE

Between February 23, 2004, and March 4, 2009, in the County of Waukesha, State of Wisconsin, the above-named defendant, being required by law to deduct Wisconsin income tax from employee wages, hold said income tax in trust, and deposit said income taxes with the State of Wisconsin and having possession of an amount exceeding \$10,000.00 in income tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. §§ 71.64(1)(a), 71.65(3)(a), and 71.67(3), did conceal said money, without consent, contrary to his authority, and with intent to convert to his use or the use of any other person except the owner - the State of Wisconsin, contrary to Wis. Stat. §§ 71.67(3), 943.20(1)(b), and 943.20(3)(c).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

COUNT 2: EMBEZZLEMENT- THEFT BY TRUSTEE

Between January 28, 2010, and April 8, 2010, in the County of Waukesha, State of Wisconsin, the above-named defendant, being required by law to deduct Wisconsin income tax from employee wages, hold said income tax in trust, and deposit said income taxes with the State of Wisconsin and having possession of an amount exceeding \$10,000.00 in income tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. §§ 71.64(1)(a), 71.65(3)(a), and 71.67(3), did conceal

said money, without consent, contrary to his authority, and with intent to convert to his use or the use of any other person except the owner - the State of Wisconsin, contrary to Wis. Stat. §§ 71.67(3), 943.20(1)(b), and 943.20(3)(c).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

COUNT 3: EMBEZZLEMENT- THEFT BY TRUSTEE

On or about February 1, 2011, in the County of Waukesha, State of Wisconsin, the above-named defendant, being required by law to deduct Wisconsin income tax from employee wages, hold said income tax in trust, and deposit said income taxes with the State of Wisconsin and having possession of an amount exceeding \$10,000.00 in income tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. §§ 71.64(1)(a), 71.65(3)(a), and 71.67(3), did conceal said money, without consent, contrary to his authority, and with intent to convert to his use or the use of any other person except the owner - the State of Wisconsin, contrary to Wis. Stat. §§ 71.67(3), 943.20(1)(b), and 943.20(3)(c).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

COUNT 4: EMBEZZLEMENT- THEFT BY TRUSTEE

On or about February 17, 2012, in the County of Waukesha, State of Wisconsin, the above-named defendant, being required by law to deduct Wisconsin income tax from employee wages, hold said income tax in trust, and deposit said income taxes with the State of Wisconsin and having possession of an amount exceeding \$10,000.00 in income tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. §§ 71.64(1)(a), 71.65(3)(a), and 71.67(3), did conceal said money, without consent, contrary to his authority, and with intent to convert to his use or the use of any other person except the owner - the State of Wisconsin, contrary to Wis. Stat. §§ 71.67(3), 943.20(1)(b), and 943.20(3)(c).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

COUNT 5: EMBEZZLEMENT- THEFT BY TRUSTEE

Between March 2, 2012, and January 31, 2013, in the County of Waukesha, State of Wisconsin, the above-named defendant, being required by law to deduct Wisconsin income tax from employee wages, hold said income tax in trust, and deposit said income taxes with the State of Wisconsin and having possession of an amount exceeding \$10,000.00 in income tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. §§ 71.64(1)(a), 71.65(3)(a), and 71.67(3), did conceal said money, without consent, contrary to his authority, and with intent to convert to his use or the use of any other person except the owner - the State of Wisconsin, contrary to Wis. Stat. §§ 71.67(3), 943.20(1)(b), and 943.20(3)(c).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

FACTUAL BASIS

1. Complainant states that the Wisconsin Department of Revenue (DOR) has employed him for the past 30 years. During the last 24 of which as a special agent charged with investigating persons suspected of committing tax crimes. Based upon his training and experience, he has familiarized himself with various provisions of the Wisconsin statutes and Wisconsin Administrative Code related to state taxation of individuals and businesses. Complainant is familiar with the methods which legitimate business entities use to comply with their obligations under Wisconsin tax laws. Further, he has been involved in numerous investigations relating to violations of sales tax laws, income tax laws, corporate franchise tax laws, withholding tax laws, and taxes related to sales of tobacco products.

2. Complainant also knows that pursuant to Chapter 71 of the Wisconsin Statutes, the State of Wisconsin requires that employers withhold income tax in trust on behalf of the State, which must be deposited with the State. Specifically, pursuant to § 71.67(3), whenever a person withholds income tax moneys from an employee, that person holds such tax moneys in trust fund on behalf of the State of Wisconsin. In addition, § 943.20(1)(b) states that a trustee having possession or custody of money who conceals possession of such money with intent to convert to his own use, or the use of anyone other than the owner, is guilty of theft.

Summary of Investigative Findings

3. The defendant Michael Spahr falsely underreported the tax money that he was withholding from his employees. Spahr engaged in this conduct annually, from 2004 until 2013. As a result of the concealment, Spahr kept \$238,530.00 (USD).

OWNERSHIP AND CONTROL OF BUSINESS

4. Complainant has reviewed business records maintained by the Wisconsin Department of Financial Institutions (“DFI”). Those records list the defendant, Michael F. Spahr, as the registered agent for D. S. ELECTRICAL CONTRACTORS, INC. The address listed on the record for both the business’s principal office and the registered agent’s office is W141 N5964 Kaul Ave, Menomonee Falls, WI 53051, which the complainant knows is located in Waukesha County. The record reflects that the business was incorporated and registered in 1997.

WT6 and WT7 TAX RECORDS

5. Complainant reviewed Wisconsin Tax records which report the monies withheld by the employer, DS ELECTRICAL. These amounts are reported on two forms. One form is called the WT6 and the other form is called the WT7. The WT6 is a

form that is filled out and submitted periodically throughout the year. The WT7 is a year-end reconciliation form that should match up with the WT6 forms.

6. Complainant compared each year's WT6 forms to the WT7 form for the same year and found that they mirrored each other.

7. For 2003, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$32,183.00 (USD). *The WT7 was filed with DOR on February 23, 2004.*

8. For 2004, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$17,996.00 (USD). *The WT7 was filed with DOR on March 15, 2005.*

9. For 2005, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$21,507.00 (USD). *The WT7 was filed with DOR on March 13, 2006.*

10. For 2006, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$19,449.00 (USD). *The WT7 was filed with DOR on March 9, 2007.*

11. For 2007, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$19,685.00 (USD). *The WT7 was filed with DOR on February 28, 2008.*

12. For 2008, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$17,696.00 (USD). *The WT7 was filed with DOR on March 4, 2009.*

13. For 2009, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$8,130.00 (USD). *The WT7 was filed with DOR on April 8, 2010.*

14. For 2010, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$5,523.00 (USD). *The WT7 was filed with DOR on February 1, 2011.*

15. For 2011, the WT6 and WT7 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$7,663.00 (USD). *The WT7 was filed with DOR on February 17, 2012.*

16. For 2012, the WT6 forms reflect that the amount of income tax withheld by DS ELECTRICAL, was \$9,175.00 (USD). *The WT6 forms were filed with DOR from March 2, 2012, to January 31, 2013.*

W2 TAX RECORDS

17. Complainant reviewed W2 tax records which were filed by each individual employee of DS ELECTRICAL for the years in question. These were the actual W2 forms that the employees relied on in filing their own personal income tax returns. These W2 records reflect the true amount of income taxes withheld from the employee salaries.

18. For 2003, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$40,011.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2003 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$7,828.00 (USD)**.

19. For 2004, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$23,566.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2004 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$5,570.00 (USD)**.

20. For 2005, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$41,031.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2005 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$19,524.00 (USD)**.

21. For 2006, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$33,875.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2006 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$14,426.00 (USD)**.

22. For 2007, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$55,240.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2007 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$35,555.00 (USD)**.

23. For 2008, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$49,182.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2008 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$31,486.00 (USD)**.

24. For 2009, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$30,222.00 (USD), instead of what was reported on the

WT6 and WT7 forms. For the 2009 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$22,092.00 (USD)**.

25. For 2010, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$36,047.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2010 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$30,524.00 (USD)**.

26. For 2011, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$41,673.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2011 tax year, the difference between the WT6/WT7 forms as compared to the W2 forms is **\$34,010.00 (USD)**.

27. For 2012, the W2 records reflect that the amount of income tax withheld by DS ELECTRICAL, was actually \$46,690.00 (USD), instead of what was reported on the WT6 and WT7 forms. For the 2007 tax year, the difference between the WT6 forms as compared to the W2 forms is **\$37,515.00 (USD)**.

28. The differences noted in paragraphs 18 to 27 total **\$238,530.00 (USD)**.

DEFENDANT – MICHAEL F. SPAHR

29. Complainant spoke with the defendant, Michael F. Spahr.

30. Spahr stated that he graduated from Marquette High School in 1986. He then stated that he went to the University of Wisconsin – Milwaukee and earned a Bachelor of Arts degree in Business in 1991. Spahr then stated that he started his current business (DS Electric) in 1991. Spahr said that he is a Master Electrician and is the owner/operator of DS Electric, an electrical contractor.

31. Complainant reviewed Spahr's "Linkedin" web profile. Under the "experience" section, Spahr stated "I was a tax accountant" at Deloitte & Touche. Complainant knows that said firm is an accounting firm. Spahr did not reference this work experience during his interview with the complainant.

32. Complainant asked Spahr if he knew who prepared the WT6 forms. Spahr said that he had done these himself.

33. Complainant asked Spahr if he knew who prepared the WT7 forms. Spahr said that he had done these himself.

34. Complainant asked Spahr if he knew who prepared the W2 forms. Spahr said that he had done these himself.

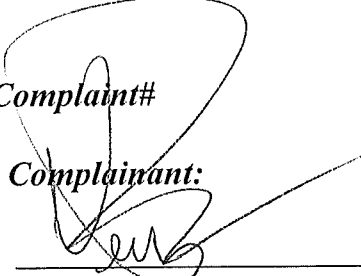
35. Spahr noted that the W2s that he gave to his employees were all accurate.

36. Spahr admitted that he prepared the WT6 and WT7 forms knowing that the amount of withholding taxes that he was sending in was not the correct amount. He then said that his business didn't have enough money. Then, Spahr admitted that he had made an error in judgment in filing the forms that he knew were not accurate and in not sending in the actual amount of tax money due.

#End of Complaint#

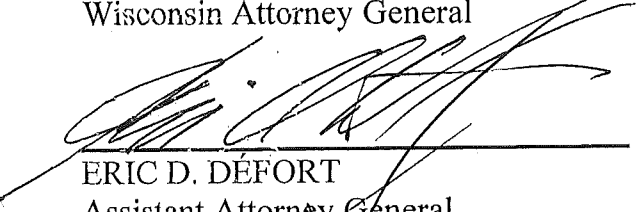
Complainant:

Dated this 12th day of JANUARY, 2015.


Vern Barnes – Special Agent
Wisconsin Department of Revenue

*Subscribed and sworn to before me and approved for filing
this 12th day of January, 2015.*

BRAD D. SCHIMEL
Wisconsin Attorney General


ERIC D. DÉFORT
Assistant Attorney General
State Bar No: 1041760
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