

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 19-CF-_____

DAVID W. ZEHNDER, DOB: 06-28-1964
816 FLORENCE STREET
FORT ATKINSON, WI 53538-1935,

Defendant.

COMPLAINT

Special Agent Paul Libeck, with the Office of Criminal Investigation at the Wisconsin Department of Revenue, being first duly sworn, states that:

Count 1: Theft

The above-named Defendant, from about 2016 to 2017, by virtue of his office, business and employment in Jefferson County, Wisconsin, had possession and custody of money of another and intentionally used, transferred, concealed, and retained possession of such money without the owner's consent, contrary to his authority, and with intent to convert to his own use and to the use of a person except the owner, contrary to Wis. Stat. § 943.20(1)(b), a Class G felony pursuant to Wis. Stat. §§ 943.20(3)(c) and 971.36(3)(c), and upon conviction may be fined not more than \$25,000 or imprisonment not to exceed ten (10) years, or both, pursuant to Wis. Stat. § 939.50(3)(g). The Court shall impose a deoxyribonucleic acid analysis surcharge of \$250 under Wis. Stat. § 973.046(1r)(a).

Count 2: Fraudulent Claim for Credit

The above-named Defendant, residing or located in Jefferson County, Wisconsin, on or about March 2, 2017, with fraudulent intent, assisted in the preparation and filing of the false and excessive claim and supplied information upon which the false and excessive claim

was prepared for a taxpayer, identified herein as Taxpayer A, contrary to Wis. Stat. § 71.83(2)(b)4., a Class H felony, and upon conviction may be fined not more than \$10,000 or imprisonment not to exceed six (6) years, or both, under Wis. Stat. § 939.50(3)(h). The Defendant may be assessed the cost of prosecution under Wis. Stat. § 71.83(2)(b)4. The Court shall impose a deoxyribonucleic acid analysis surcharge of \$250 under Wis. Stat. § 973.046(1r)(a).

Count 3: Fraudulent Claim for Credit

The above-named Defendant, residing or located in Jefferson County, Wisconsin, on or about May 15, 2017, with fraudulent intent, assisted in the preparation and filing of the false and excessive claim and supplied information upon which the false and excessive claim was prepared for a taxpayer, identified herein as Taxpayer B, contrary to Wis. Stat. § 71.83(2)(b)4., a Class H felony, and upon conviction may be fined not more than \$10,000 or imprisonment not to exceed six (6) years, or both, under Wis. Stat. § 939.50(3)(h). The Defendant may be assessed the cost of prosecution under Wis. Stat. § 71.83(2)(b)4. The Court shall impose a deoxyribonucleic acid analysis surcharge of \$250 under Wis. Stat. § 973.046(1r)(a).

Count 4: Fraudulent Claim for Credit

The above-named Defendant, residing or located in Jefferson County, Wisconsin, on or about May 15, 2017, with fraudulent intent, assisted in the preparation and filing of the false and excessive claim and supplied information upon which the false and excessive claim was prepared for a taxpayer, identified herein as Taxpayer C, contrary to Wis. Stat. § 71.83(2)(b)4., a Class H felony, and upon conviction may be fined not more than \$10,000 or imprisonment not to exceed six (6) years, or both, under Wis. Stat. § 939.50(3)(h). The Defendant may be assessed the cost of prosecution under Wis. Stat. § 71.83(2)(b)4. The Court shall impose a deoxyribonucleic acid analysis surcharge of \$250 under Wis. Stat. § 973.046(1r)(a).

Count 5: Fraudulent Claim for Credit

The above-named Defendant, residing or located in Jefferson County, Wisconsin, on or about May 15, 2017, with fraudulent intent, assisted in the preparation and filing of the false and excessive claim and supplied information upon which the false and excessive claim was prepared for a taxpayer, identified herein as Taxpayer D, contrary to Wis. Stat. § 71.83(2)(b)4., a Class H felony, and upon conviction may be fined not more than \$10,000 or imprisonment not to exceed six (6) years, or both, under Wis. Stat. § 939.50(3)(h). The Defendant may be assessed the cost of prosecution under Wis. Stat. § 71.83(2)(b)4. The Court shall impose a deoxyribonucleic acid analysis surcharge of \$250 under Wis. Stat. § 973.046(1r)(a).

Facts Constituting the Offenses Charged

I, the Complainant, am a Special Agent (S/A) with the Office of Criminal Investigation at the Wisconsin Department of Revenue and base this complaint upon my own investigation, relying upon my training and experience. I obtained statements from taxpayers and the Defendant. The Defendant's incriminating statements are presumed truthful and reliable as statements against his penal interest. Statements from taxpayers are believed to be truthful and reliable as victim and witness statements. Based upon information and belief, I state:

- 1) The Defendant, David W. Zehnder (Zehnder), operated a business named A-Z Productivity, Inc. (hereinafter A-Z Productivity). Zehnder operated A-Z Productivity as a tax return preparer business, whereby he charged taxpayers a fee to prepare their federal and state tax returns. A-Z Productivity is a registered corporation with the Wisconsin Department of Financial Institutions (DFI) with Zehnder as the registered agent and the office registered in Jefferson County, Wisconsin. The corporation has been registered to addresses in Jefferson County since at least 2011.
- 2) In March 2018, S/A Alan Kurth and I met with Zehnder to discuss complaints received from taxpayers. The meeting took place at 816 Florence Street in Fort Atkinson, Jefferson County, Wisconsin, which presently is the registered office for A-Z Productivity and Zehnder's residence. Zehnder produced taxpayer client records and a list of client names. Zehnder stated that he obtained an associate degree in accounting. Zehnder said that he prepared returns for taxpayers using a commercial software program and either filed returns electronically or submitted the returns by mail.
- 3) Zehnder engaged in unlawful acts in his tax preparer business through a scheme by inflating itemized deduction credits (IDC) on returns. The investigation revealed two distinct aspects to Zehnder's inflated IDC scheme. First, Zehnder inflated taxpayers' IDC on fraudulent tax returns resulting in a tax loss to Wisconsin between 2013 and 2017. Second, starting in 2016, Zehnder stole or attempted to steal a portion of several the taxpayers' refund in 2016 and 2017.
- 4) The investigation into Zehnder's inflated IDC scheme included reviewing tax returns from 26 taxpayers.¹ Many of the taxpayers had hired Zehnder to prepare multiple years of tax returns so the investigation included reviewing 83 tax returns from the 26 taxpayers. Based upon my knowledge, skill, experience, training, and education, Zehnder's scheme resulted in a tax loss to Wisconsin in the amount of \$73,910 from

1. For purposes of this complaint a married couple filing jointly is identified as a single taxpayer.

2013 to 2017 and stolen or attempted stolen portions of taxpayers' refunds in the amount of \$32,312 in 2016 and 2017.

- 5) The investigation revealed that Zehnder rendered a false and fraudulent income tax return with intent to defeat and evade an assessment required by chapter 71. The investigation also revealed that Zehnder obtained a refund and credit with fraudulent intent by assisting in the preparation and filing of the false and excessive claims from 2013 to 2017:

Year Returns Files In	Number of Fraudulent Returns Filed	Total Tax Loss By Year
2013	1	\$ 1,937
2014	8	\$ 8,361
2015	24	\$ 20,182
2016	26	\$ 19,824
2017	24	\$ 23,606
Total:	83	\$ 73,910

On almost all the returns prepared by Zehnder, he deducted a significant amount of itemized deductions for medical expenses and gifts to charity. It was not unusual for Zehnder to report itemized deductions that reduced a taxpayer's federal taxable income to zero. The medical expenses and charitable gifts deducted on the federal return would be used to claim the Wisconsin itemized deduction credit. The investigation revealed that many customers did not have sufficient legitimate itemized deductions to warrant itemizing and Zehnder reported false deductions.

- 6) The investigation revealed that, for at least 21 of the 26 taxpayers, Zehnder stole or attempted to steal refunds in the amount of \$32,312 from 2016 to 2017. Zehnder had possession of money belonging to the taxpayers because of his employment. He intentionally used the money without each taxpayer's consent and contrary to his authority. Zehnder admitted that the use of the money was without consent and contrary to his authority. Zehnder diverted \$19,812 of the \$32,312 into bank accounts under his name and the name of his corporation, A-Z Productivity. Zehnder had attempted to convert the remaining \$12,500, but he was unsuccessful due to Internal Revenue Service (IRS) safeguards. Interviews with the taxpayers confirmed that Zehnder did not have their authorization or consent.

- 7) The investigation revealed that, in multiple incidents, Zehnder used a Department of Treasury IRS Form 8888 to divert a portion of the taxpayer's return to bank accounts under his name and the name of his corporation, A-Z Productivity. The form is used by a taxpayer to directly deposit the taxpayer's return into one or more accounts at the taxpayer's financial institution. As the tax preparer, Zehnder completed the IRS Form 8888. In many instances, Zehnder entered his business or personal bank accounts on the form in addition to entering the taxpayer's financial institution. Zehnder directed most of the tax return into the taxpayer's account, but then diverted a portion to his account. In each incident, Zehnder used or attempted to use personal identifying information of the taxpayers including their names or SSNs. Zehnder admitted that he did not have the authorization or consent of the taxpayers for such a scheme.
- 8) The following four returns illustrate the distinct aspects to Zehnder's inflated IDC scheme:
- a) Zehnder prepared tax returns for a taxpayer, identified herein as Taxpayer A. In an interview on November 16, 2017, Taxpayer A stated that he hired Zehnder and paid him \$350.00 in cash to prepare his state and federal income taxes for the 2016 tax year. Taxpayer A also had hired Zehnder to prepare previous tax years including the years 2014 and 2015. Taxpayer A stated that his medical expenses were less than \$5,000.00 each year and his charitable giving consisted of \$144 through a payroll deduction and an estimated value of \$250.00 in goods. A review of Taxpayer A's most recent return showed that Zehnder had entered \$7,557.00 in medical expenses and \$15,450.00 in charitable gifts. The fraudulent entries by Zehnder resulted in an IDC claim of \$886.00. Based upon the information provided by Taxpayer A and a review of relevant records, there should have been no IDC claimed resulting in a tax loss to Wisconsin in the amount of \$886.00 for the tax year of 2016. A transcript of the IRS Form 8888 showed Zehnder diverted \$2,000 of Taxpayer A's return into his account. Taxpayer A stated that he did not give Zehnder permission or consent to divert the return into his account. Records show that the fraudulent IDC claim was filed on or about March 2, 2017.
- b) Zehnder prepared tax returns for a taxpayer, identified herein as Taxpayer B. In an interview on October 6, 2017, Taxpayer B stated that she hired Zehnder and paid him \$975.00 to prepare her state and federal income taxes for the tax years of 2013 to 2016. Taxpayer B stated that she did not report any medical expenses to Zehnder and donated an estimated value of goods between \$100.00 and \$500.00 annually. A review of Taxpayer B's most recent return showed that

Zehnder had entered \$3,121.00 in medical expenses and \$14,600.00 in charitable gifts. The fraudulent entries by Zehnder resulted in an IDC claim of \$1,070.00. Based upon the information provided by Taxpayer B and a review of relevant records, the correct IDC claims should have been \$209.00 resulting in a tax loss to Wisconsin in the amount of \$861.00 for the tax year of 2016. In the most recent return, Zehnder used the IRS Form 8888 to divert \$2,000 of Taxpayer B's return into his account. Taxpayer B stated that she did not give Zehnder permission or consent to divert her return into his account. Records show that the fraudulent IDC claim was filed on or about May 15, 2017.

- c) Zehnder prepared tax returns for a married couple, identified herein as Taxpayer C. In an interview on February 21, 2018, the husband stated that Taxpayer C hired Zehnder and paid him \$300.00 each year to prepare state and federal income taxes for the tax years of 2013 to 2016. Taxpayer C estimated donating a maximum of \$500.00 of cash and non-cash items each year to charity. A review of Taxpayer C's most recent return showed that Zehnder had entered \$18,230.00 in charitable gifts. The fraudulent entries by Zehnder resulted in an IDC claim of \$1,671.00. Based upon the information provided by Taxpayer C and a review of relevant records, the correct IDC claims should have been \$784.00 resulting in a tax loss to Wisconsin in the amount of \$887.00 for the tax year of 2016. In the most recent return, Zehnder used the IRS Form 8888 to divert \$2,000 of Taxpayer C's return into his account. Taxpayer C stated that he did not give Zehnder permission or consent to divert the return into his account. Records show that the fraudulent IDC claim was filed on or about May 15, 2017.
- d) Zehnder prepared tax returns for a taxpayer, identified herein as Taxpayer D. In an interview on September 11, 2017, Taxpayer D stated that she hired Zehnder and paid him \$350.00 to prepare her state and federal income taxes for the 2016 tax year. Taxpayer D also had hired Zehnder for the previous year. Taxpayer D stated that she did not report any medical expenses to Zehnder and donated an estimated value of \$1,000.00 in cash and non-cash items. A review of Taxpayer D's most recent return showed that Zehnder had entered \$14,528.00 in medical expenses and \$9,150.00 in charitable gifts. The fraudulent entries by Zehnder resulted in an IDC claim of \$832.00. Based upon the information provided by Taxpayer D and a review of relevant records, there should have been no IDC claimed resulting in a tax loss to Wisconsin in the amount of \$832.00 for the tax year of 2016. For the 2016 tax year, Zehnder used the IRS Form 8888 to divert \$2,000 of Taxpayer D's return into his account. Taxpayer D stated that she did

not give Zehnder permission or consent to divert her return into his account. Records show that the fraudulent IDC claim was filed on or about May 15, 2017.

- 9) In March 2018, Zehnder admitted to S/A Kurth and me that he had falsified tax returns and taken taxpayer refunds without their consent. Zehnder confirmed that the inflated IDC on returns was a marketing strategy, stating that he knowingly falsified tax returns to get larger refunds so taxpayers would be happy and tell other taxpayers about his business. Zehnder said he could not pay the taxpayers back because he no longer had the money.

I, the Complainant, believe that the information contained above is truthful and accurate. I believe that there is probable cause to believe that the Defendant committed the criminal offenses identified in this complaint.

Dated this 21st day of February, 2019.

Electronically signed by:

/s/ Paul Libeck
Special Agent Paul Libeck
Office of Criminal Investigation
Wisconsin Department of Revenue

Subscribed and sworn to before me and approved
for filing this 21st day of February, 2019.

Electronically signed by:

/s/ Winn S. Collins
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