

FILED
09-07-2018
Barron County, WI
Sharon Millermon
2018CM000293
Honorable Maureen D
Boyle
Branch 3

STATE OF WISCONSIN**CIRCUIT COURT****BARRON COUNTY**

STATE OF WISCONSIN

Plaintiff,

DA Case No.: 2018BA001166
Assigned DA/ADA: Brian H Wright
Agency Case No.:

-VS-

Court Case No.: 18 CM 293

Scott C Miller
818 South Main St
Rice Lake, WI 54868
DOB: 04/16/1970
Sex/Race: M/W
Eye Color:
Hair Color:
Height: ;
Weight: ;
Alias:

ATN:

Criminal Complaint

Defendant,

The undersigned, on information and belief, being first duly sworn, states that:

Count 1: OPERATE WITHOUT SELLER PERMIT

The above-named defendant on or between 6/19/17 and 8/21/17, Barron County, Wisconsin, , contrary to sec. 77.52(12), Wis. Stats., a Misdemeanor, and upon conviction .

Pursuant to Wis. Statute 939.61(2) if a person is convicted of a misdemeanor under state law for which no penalty is expressed, the person may be fined not more than \$500 or imprisoned not more than 30 days or both.

Count 2: TAX EXEMPTION

The above-named defendant on or between 6/19/17 and 2/22/18, Barron County, Wisconsin, did certify to the seller that the sale of property or taxable service was exempt, knowing at the time of purchase that it was not exempt, for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction, contrary to sec. 77.52(16), 939.61(2) Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500 or imprisoned not more than 30 days or both.

Count 3: FRAUD/SALES, USE TAX RETURN

The above-named defendant on or between 7/1/17 and 12/31/17, Barron County, Wisconsin, , contrary to sec. 77.60(6), Wis. Stats., a Misdemeanor, and upon conviction.

Pursuant to Wis. Statute 939.61(2) if a person is convicted of a misdemeanor under state law for which no penalty is expressed, the person may be fined not more than \$500 or imprisoned not more than 30 days or both.

Count 4: INTENTIONALLY FAIL TO PAY SALES TAX (<=\$2,500)

The above-named defendant on or between 1/1/16 and 8/1/18, Barron County, Wisconsin, as a person who collected tax moneys imposed under s. 77.52, 77.53 or 77.71 from a consumer, user or purchaser who received those tax moneys as trust funds and state property, did intentionally fail or refuse to pay over those tax moneys to the state at the time required by s. 77.60 or fraudulently withheld, appropriated or used any of those tax moneys whose value does not exceed \$2,500, contrary to s. 943.20, and s. 943.20 (3) (a), contrary to sec. 77.60(11), 939.51(3)(a) Wis. Stats., a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than nine (9) months, or both.

PROBABLE CAUSE:

Basis for this complaint is a statement by the undersigned that he/she is District Attorney/Assistant District Attorney with the Barron County District Attorney's Office and as such has access to all reports and complaints filed with his/her department. Complainant is informed by the report of Revenue Field Agent Angela Cummings with the Wisconsin Department of Revenue.

Angela Cummings, Revenue Field Agent with the Wisconsin Department of Revenue, reports an examination of the records and files of the Wisconsin Department of Revenue was made on August 30, 2018, and the following facts were determined:

On August 1, 2007, the defendant Scott C. Miller, was issued a seller's permit from the Wisconsin Department of Revenue, under the name Don The Muffler Man, LLC, with the first Wisconsin taxable sales made August 1, 2007. The business location listed on the seller's permit was 818 South Main Street, Rice Lake, Wisconsin 54868.

The seller's permit number 004-0003285539-01 was converted to the Wisconsin Tax Account Number 456-0003285539-02 in November 2007, when the Wisconsin Department of Revenue changed their operating system and the defendant with the business name of Don the Muffler Man, LLC's account was converted to the new operating system.

The Wisconsin Department of Revenue initiated proceedings to revoke the seller's permit for Don the Muffler Man LLC for failure to file and pay sales and use and withholding taxes. A Notice and Order to Show Cause was issued on June 23, 2014 for a hearing date of July 15, 2014 at 8:30 AM at 2135 Rimrock Road, Madison, Wisconsin. The hearing letter (L0993479072) which was sent by certified mail was signed for by the defendant on June 26, 2014. Agent Cummings reports Lisa Potts with the Wisconsin Department of Revenue, appeared for the hearing but the defendant did not appear.

The Wisconsin Department of Revenue issued a Findings and Order of Revocation which gave a revocation date of August 14, 2014, at the close of business on that date. The Findings and Order letter (L0149038496) was sent by certified mail on July 15, 2014. The Findings and Order was signed for by the defendant on July 17, 2014.

The Wisconsin Department of Revenue issued a Final Warning Letter (L0941975968) on September 3, 2014, advising the defendant that it is a criminal offense to sell taxable goods or services without a valid seller's permit.

On January 21, 2015, the Barron County Sheriff's Department, Civil Process Division, executed tax warrants for the Wisconsin Department of Revenue.

On January 27, 2015, the Barron County Sheriff's Department received payment regarding the execution action. The Sheriff's Department notified Wisconsin Department of Revenue, Revenue Field Agent, Anthony Pellatt, of the payment. The Wisconsin Department of Revenue reinstated the seller's permit for Don the Muffler Man, LLC.

On January 30, 2015, the Wisconsin Department of Revenue received the remittance for full payment of the sales and use and withholding taxes of Don the Muffler Man, LLC.

The Wisconsin Department of Revenue issued a Revocation Warning letter (L0342522080) on November 16, 2016 for failure to file and pay sales and use and withholding taxes. The warning letter allowed Don the Muffler Man, LLC until December 5, 2016 to come into compliance.

On November 23, 2016, the Wisconsin Department of Revenue executed tax warrants at 818 South Main St., Rice Lake, Wisconsin. The sum of \$136.09 was taken during the execution action.

On March 22, 2017, a Revocation Warning letter (L0807529184) was issued. This warning letter allowed Don the Muffler Man, LLC until March 27, 2017 to file and pay all sales and use and withholding tax returns.

On April 7, 2017, the Wisconsin Department of Revenue started proceedings to revoke the seller's permit for Don the Muffler Man, LLC and a Notice and Order to Show Cause (L0500812256) was issued for a hearing to be held May 9, 2017 at 8:30 AM at 2135 Rimrock Road, Madison, Wisconsin. The notice and order to show cause was sent certified mail by the Wisconsin Department of Revenue on April 7, 2017. That notice and order to show cause was signed for by the defendant on April 10, 2017. Alex Risberg, with the Wisconsin Department of Revenue, appeared for the hearing but the defendant did not appear.

On May 12, 2017, the Wisconsin Department of Revenue issued a Findings and Order of Revocation (L1706648032) for the seller's permit to be revoked effective June 15, 2017 at the close of business on that date. The findings and order was sent by the Wisconsin Department of Revenue by certified mail. The Findings and Order was signed for by the defendant on May 17, 2017.

On June 22, 2017, the Wisconsin Department of Revenue issued a Final Warning letter (L0074330592) to Don the Muffler Man, LLC advising the defendant that it is a criminal offense to sell taxable goods or services without a valid seller's permit.

Revenue Field Agent Paul Walters, with the Wisconsin Department of Revenue, reports on June 30, 2017, he made a field stop at the business. Agent Walters reports the business was open and he made contact with the defendant. Agent Walters provided the defendant a copy of the Final Warning letter (L0074330592) dated June 22, 2017. Agent Walters reports the defendant indicated he had received that letter in the mail. Agent Walters questioned the defendant on business operations. The defendant stated that the business was not providing

any service on vehicles. The defendant stated he was only at the business to answer calls. Agent Walters advised the defendant that no business operations were to take place.

Agent Walters reports he made another field stop at the business on July 27, 2017. Agent Walters reports the business was open and he observed that one vehicle was on a lift, and the lift was elevated. Agent Walters reports the defendant was not at the business. Agent Walters returned to the business later that day and made contact with the defendant. The defendant stated that no sales transactions were taking place and the vehicle in the service bay was a formerly paid repair that was owed additional services based on a prior agreement. Agent Walters informed the defendant that the Final Warning letter and revocation of his seller's permit remained in effect. The defendant indicated he knew this information and had not been doing any new business.

Agent Walters reports he spoke with the defendant on July 31, 2017, and advised him that his seller's permit was revoked and that it was illegal for Don The Muffler Man, LLC to be open and operating.

Agent Walters reports on August 8, 2017, he mailed letters to Andrew and Laura Hecht, of Cumberland, Wisconsin and to Jeanette Koster, of Cameron, Wisconsin, requesting a copy of the invoice or receipt for service provided for work performed on their vehicles by Don The Muffler Man, LLC, for any service provided on or after July 25, 2017.

Agent Cummings reports on August 21, 2017 she spoke with the defendant by phone. Agent Cummings reports she informed the defendant that Don the Muffler Man, LLC had no valid seller's permit and that it was illegal to continue business operations. Agent Cummings reports the defendant stated he knew this and would not operate.

Agent Walters reports on August 23, 2017, he received an invoice from Andrew and Laura Hecht. The invoice was dated July 26, 2017, for service received at Don The Muffler Man, LLC. The invoiced total for work performed on the Hecht's vehicle was \$200 and an additional \$11 tax for a total of \$211.

Agent Cummings reports on August 24, 2017, she spoke with the defendant and requested receipts for work Don The Muffler Man, LLC had performed from June 16, 2017 to August 24, 2017. The fax received from Don The Muffler Man, LLC included invoices dated June 15, 2017 through August 21, 2017 in the following amounts:

Invoice Number 50961 (June 15, 2017): \$75 for work performed, \$4.13 tax, \$79.13 total.

Invoice Number 50964 (June 19, 2017): \$85 for work performed, \$4.68 tax, \$89.68 total.

Invoice Number 50976 (June 23, 2017): \$34.95 for work performed, \$1.92 tax, \$36.87 total.

Invoice Number 50974 (June 23, 2017): \$95 for work performed, \$5.23 tax, \$100.23 total.

Invoice Number 50988 (July 6, 2017): \$144.95 for work performed, \$7.97 tax, \$152.92 total.

Invoice Number 50999 (July 14, 2017): \$67 for work performed, \$3.69 tax, \$70.69 total.

Invoice Number 51002 (July 17, 2017): No charge.

Invoice Number 51071 (July 25, 2017): No charge.

Invoice Number 51024 (July 27, 2017): \$25 for work performed, \$1.38 tax, \$26.38 total.

Invoice Number 51038 (August 4, 2017): No charge.

Invoice Number 51042 (August 8, 2017): \$140 for work performed, \$7.70 tax, \$147.70 total.

Invoice Number 51046 (August 9, 2017): \$117.95 for work performed, \$6.49 tax, \$124.44 total.

Invoice Number 51048 (August 10, 2017): \$85 for work performed, \$4.68 tax, \$89.68 total.
Invoice Number 51047 (August 10, 2017): \$75 for work performed, \$4.13 tax, \$79.13 total.
Invoice Number 51059 (August 16, 2017): \$130 price, No total included.
Invoice Number 51062 (August 18, 2017): \$130 for work performed, \$7.15 tax, \$137.15 total.
Invoice Number 51063 (August 18, 2017): \$65 for work performed, \$3.58 tax, \$68.58 total.
Invoice Number 51071 (August 21, 2017): \$20 for work performed, \$1.10 tax, \$21.10.

Agent Cummings reports on September 1, 2017, she attempted to speak with the defendant by calling his business and cell phone several times but the defendant did not return any of her calls.

Agent Cummings reports on September 25, 2017, she made a field stop at the business. Agent Cummings reports the business was open and the defendant was behind the counter. Agent Cummings advised the defendant that it was illegal for him to continue to operate the business. The defendant stated that one car was a radio station gift certificate and the other was waiting for him to get the permit reinstated. Agent Cummings reports she advised the defendant that the gift certificate was a taxable sale and could not be made.

Agent Cummings reports on October 16, 2017, she called the defendant advising him that the Sales and Use tax form for Don The Muffler Man, LLC was not filed for August, 2017 and the September, 2017 Sales and Use tax form would be due at the end of the month. The defendant stated he would talk to his accountant and get those returns filed.

Agent Cummings reports on October 30, 2017, she mailed the defendant advising him that the Sales and Use tax forms for July 2017, August 2017, and September 2017 needed to be filed that day.

Agent Cummings reports on November 13, 2017 she received a cashier's check from the defendant in the amount of \$1,000.00. Agent Cummings reports her last contact with the defendant was on November 16, 2017. No payments from the defendant have been received by the Wisconsin Department of Revenue on the business since November 13, 2017.

The files of the Wisconsin Department of Revenue reveal that Don The Muffler Man, LLC, the defendant, nor any other entity, has applied for another Wisconsin seller's permit nor has a Wisconsin seller's permit been issued to Don The Muffler Man, LLC, the defendant, nor any other entity at 818 South Main Street, Rice Lake, Wisconsin. Agent Cummings notes the defendant's continued operation of the business without a valid seller's permit is a violation of Section 77.52(12) of the Wisconsin Statutes.

Agent Cummings reports making contact with April Habas, the owner of Rice Lake Auto Supply, regarding purchases of NAPA auto parts by Don The Muffler Man, LLC. April indicated Don The Muffler Man is a wholesale account and is not charged tax on its purchases due to the defendant providing Rice Lake Auto Supply with a Wisconsin Sales and Use Tax Exemption Certificate. The Tax Exemption Certificate on file at Rice Lake Auto Supply was signed by the defendant on July 5, 2016.

Agent Cummings reports receiving from Rice Lake Auto Supply a transaction register of purchases made by Don The Muffler Man, LLC from June 16, 2017 to March 23, 2018. Over that period, after the revocation of the seller's permit, agent Cummings calculated Don The

Muffler Man, LLC made gross purchases from Rice Lake Auto Supply in the amount of \$31,148.00 and tax abatement in the amount of \$1,713.14, as a result of no sales tax being charged to Don The Muffler Man, LLC on its purchases. Agent Cummings notes the defendant's continued purchases of auto parts on a false exemption certificate that was revoked is a violation of Section 77.52(16) of the Wisconsin Statutes.

Agent Cummings reports the defendant failed to file monthly sales tax returns for Don The Muffler Man, LLC, for the months of July 2017, August 2017, September 2017, October 2017, November 2017, and December 2017. Agent Cummings notes the defendant's failure to file monthly sales tax returns is a violation of Section 77.60(6) of the Wisconsin Statutes.

Agent Cummings reports the defendant failed to pay monthly sales tax returns for Don The Muffler Man, LLC in 2016, 2017 and 2018. Agent Cummings reports the total sales and use tax arrearage owed by Don The Muffler Man, LLC as of August 30, 2018 is estimated to be \$27,487.08. Agent Cummings notes failure to pay monthly sales tax returns is a violation of Section 77.60(11) of the Wisconsin Statutes.

The statements made by the law enforcement officers can be considered truthful, credible, and reliable because of the positions of trust they hold. The statements of the citizen witnesses can be considered truthful, credible, and reliable because they are made by citizen witnesses. The statements of the defendant(s) can be considered truthful, credible, and reliable to the extent to which they are admissions against interests.

Subscribed and sworn to before me on 09/07/18

Electronically Signed By:

John M O'Boyle

Assistant District Attorney

State Bar #: 1017287

Electronically Signed By:

Brian H. Wright

Complainant