

**FILED
07-18-2023
CIRCUIT COURT
DANE COUNTY, WI
2023CM001522**

JSL OI IA 8/24/23 830
Assign to Branch

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN
Plaintiff,

vs.

DAVID M. GERBER

724 Harvest Ln
Stoughton, WI 53589

DOB: 05/02/1957

Sex/Race: M/W

Eye Color: Blue

Hair Color: Brown

Height: 6 ft 0 in

Weight: 200 lbs

Alias:

Defendant,

Ref. Agency: WI Dept of Revenue
DA Case No.: 2023DA005700
Assigned DA/ADA:
Agency Case No.: WIDOR 334910720
Court Case No.: **23CM**__
ATN:

CRIMINAL COMPLAINT

For Official Use

The below-named complaining witness being first duly sworn states the following:

Count 1: FILING FRAUDULENT SALES TAX RETURN

The above-named defendant between 9/15/22 and on or ab out 9/22/22, in the City of Madison, Dane County, Wisconsin, as a person required to pay sales tax on the purchase of a motor vehicle purchased from an out-of-state seller, did file a false or fraudulent report or return or failed to furnish a report or return when due with the intent, in either case, to defeat or evade the tax imposed by this subchapter, is guilty of a misdemeanor, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be sentenced to a maximum penalty of a fine not to exceed \$1000 or imprisonment of not more than 1 year or both..

FACTS:

Your complainant is a Court Officer with the State of Wisconsin Department of Revenue and for this complaint is relying on the written report(s) submitted by Special Agent Steve Kosmosky.

Special Agent (SA) Kosmosky reports on September 22, 2022, **DAVID GERBER** (the defendant, "Gerber" hereinafter, who later verbally identified himself) filed a Wisconsin Title & License Plate Application form, commonly known as a MV-1, with an intentionally under-stated vehicle sale price thereby evading Wisconsin sales tax.

SA Kosmosky reviewed the Wisconsin Department of Transportation (DOT) Form MV-1, "Wisconsin Title & License Plate Application" Gerber submitted, signed and dated September 22, 2022. Gerber reported the purchase of a 1958 Chevrolet Apache 3100 step-side pickup truck, vehicle identification number ending in 1612. Section E of the form showed the purchase price of the vehicle was reported as \$3,800 which resulted in \$190 of Wisconsin sales tax (5%)

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reported. Gerber did not report any county sales tax (0.5%). Information from the confidential source revealed Gerber wired \$38,400 (excluding the wire transfer fee) to the seller of the truck. Additionally, the source noted they had seen some of the paperwork from the sale which showed a reported sale price of \$3,800. When the source asked about the difference, Gerber allegedly acknowledged the wire amount of \$38,400 was correct.

The following are the facts collected by SA Kosmosky relative to this investigation. On September 15, 2022, David Gerber purchased a 1958 Chevrolet Apache 3100 step-side pickup truck, vehicle identification number ending in 1612, from an individual whose name forms the initials BH. The available auction records showed Gerber placed the following bids on the truck:

- 9/15/2022 @ 2:11 PM for \$21,000
- 9/15/2022 @ 2:54 PM for \$32,500
- 9/15/2022 @ 2:55 PM for \$34,000
- 9/15/2022 @ 2:57 PM for \$36,000
- 9/15/2022 @ 2:58 PM for \$38,000 (winning bid)

Gerber submitted a handwritten Wisconsin DOT Form MV-1, "Wisconsin Title & License Plate Application" signed and dated September 22, 2022. Wisconsin DOT Consumer Protection Investigator John Kleinfeldt.

On section E of the Form MV-1 Gerber reported the following:

Title Fee of \$164.50

Purchase Price of \$3,800

Note: directly under the field is the text, "WARNING it is a crime to understate the purchase price"

State Sales Tax of \$190

County Sales Tax of \$0

License Plate Fee of \$100

Wheel Tax of \$28

Fee Total of \$482.50

The sale price field entry was written in a such a way as to indicate it was done so intentionally. Gerber wrote the two zeros that would be the cents amount smaller than the dollar amount digits and drew a line underneath them. Additionally, the position was slightly higher in relation to the dollar amount digits. Gerber also drew a line through the two zeros in the \$3,800 reported sale price.

Part of the sale/transfer documents exchanged between Gerber and BH included a California Department of Motor Vehicles document titled, "Notice of Transfer and Release of Liability." The document was handwritten, signed by BH, and dated September 15, 2022. The selling price shown on the document was \$3,800. Additionally, it is noteworthy that the document has boxes for each digit and BH placed a dash (-) in each of the two fields preceding the dollar amount. The field reads, "- - 3 8 0 0".

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The actual sale price of the truck was \$38,000 as was confirmed by the auction records as well as financial records of the electronic funds transfer from Gerber's One Community Bank account to BH.

SA Kosmosky reports that under Wisconsin law, "*A Wisconsin resident purchasing a motor vehicle in a foreign country or another state, or for delivery in a foreign country or another state, must pay the Wisconsin use tax, based upon the purchase price, when the resident registers the motor vehicle in Wisconsin for use in Wisconsin.*" A motor vehicle purchased outside Wisconsin and registered in Wisconsin is subject to Wisconsin tax.

By understating the sale price of the truck, Gerber shorted the State of Wisconsin \$1,710 in State sales tax. Gerber reported he owed \$190 in Wisconsin sales tax (5% of \$3,800) on the truck sale when in fact he owed \$1,900 (5% of \$38,000). Additionally, Gerber failed to report the 0.5% of county sales tax. He owed \$190 of county sales tax (0.5% of \$38,000) that he did not report. Available DOT vehicle title information for the truck showed he did eventually pay \$19 of county sales tax. The adjusted amount of county sales tax that remains due is \$171. The total loss to Wisconsin for State and county sales tax is \$1,881.

Informational tax records show Gerber used the 724 Harvest Lane, City of Stoughton, Dane County, Wisconsin address going back to at least 2007. No other addresses are shown in the tax records for Gerber. Gerber's 2021 Wisconsin income tax return was received by DOR January 31, 2022. Gerber's 2022 Wisconsin income tax return was received by DOR February 1, 2023. Gerber reported his address as 724 Harvest Lane on both returns.

On March 20, 2023, SA Kosmosky spoke to Gerber by phone who verbally identified himself and provided some information which further confirmed his identity.

SA Kosmosky explained the reason for his contact was because of the reported sale price and corresponding Wisconsin sales tax reported for his purchase of a 1958 Chevrolet Apache 3100 truck. SA Kosmosky asked Gerber how much he paid for the truck. He replied something to the effect of, "\$38,000 for the truck. SA Kosmosky also paid \$400 for some accessories the seller optioned." Gerber told SA Kosmosky the seller's name was BH who was from California.

SA Kosmosky asked him to describe the transaction. Gerber said he paid BH via an electronic funds transfer from his personal account at Stoughton Community Bank (One Community Bank). He said he went into the bank to facilitate the transfer but couldn't remember the name of the bank employee he worked with. Gerber told SA Kosmosky something to the effect, "I know I put the wrong amount on that form, but it wasn't intentional." I asked him to clarify what he was talking about. He said, "That form, I wrote the wrong amount on there." SA Kosmosky verified he was talking about the Form MV-1, and he said he was. He went on to ask what he had to do to make it right.

Gerber confirmed he purchased the truck via an online auto auction website called "bringatrailer.com." Gerber confirmed the truck had been in California prior to his purchase.

SA Kosmosky told Gerber he possessed paperwork which showed both he and BH had reported the sale price of the truck as \$3,800. SA Kosmosky asked him to explain how both could make the same error and report the exact same underreported selling price. Gerber

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didn't provide an explanation. He told SA Kosmosky he was willing to pay the tax he owed and repeated he didn't intend to do anything wrong.

On March 21, 2023, SA Kosmosky spoke with Gerber via phone. Gerber told SA Kosmosky he lied yesterday about the truck sale. Gerber admitted BH and him worked it out and agreed to report the sale price as \$3,800 so he wouldn't have to pay as much sales tax.

On March 24, 2023, SA Kosmosky spoke with BH via phone. BH said Gerber had told him that he admitted to SA Kosmosky that he understated the sale price of the truck.

SA Kosmosky explained that Gerber told SA Kosmosky they had agreed to report the sale of the truck as \$3,800 instead of the actual price of \$38,000. Although BH confirmed the actual sale price of the truck was \$38,000, he wouldn't admit to conspiring with Gerber to understate the value of the truck.

SA Kosmosky explained he had a California DOT document titled "Notice of Transfer and Release of Liability" that appeared to have been signed by BH, dated September 15, 2022. BH confirmed he filled out the document and had provided a copy of it to Gerber. SA Kosmosky asked BH what he wrote in for the sale price of the truck. He didn't answer. SA Kosmosky then told him he had reported \$3,800 as the sale price. BH replied something to the effect of, "What you think happened, probably did happen."

This investigation showed Gerber knowingly and intentionally made a false or fraudulent report (Form MV-1) with intent to evade tax. Gerber colluded with the seller of the truck so both parties reported the same understated sale price of \$3,800 on various documents.

Gerber had the income and assets needed to purchase an expensive collector vehicle without taking out a loan. Gerber knowingly understated the vehicle price to evade \$1,710 of Wisconsin sales tax and \$171 of county sales tax. Gerber had the means to pay the tax.

Your complainant is aware these incidents occurred in Dane County, Wisconsin.

****THIS COMPLAINT IS BASED ON** the information and belief of your complainant, who is a Court Officer for the State of Wisconsin Department of Revenue, and who learned of the above offense from the reports of State of Wisconsin Department of Revenue Special Agent Steve Kosmosky, which report your complainant believes to be truthful and reliable inasmuch as they were prepared during the course of the officer(s) official duties.

Further, your complainant believes the information furnished by witness(es) to be truthful and reliable inasmuch as they are citizen informant(s) and witnessed the events described.

Your complainant believes the statements of the Defendant(s) to be truthful and reliable insofar as they are admissions against penal interest.

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Subscribed and sworn to before me on
07/18/23

Electronically Signed By:

Tomas F. Valerio

Assistant District Attorney

State Bar #: 1129382

Electronically Signed By:

Special Agent Steve Kosmosky

Complainant