

AO 257 (Rev. 6/78)

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEDING
**OFFENSE CHARGED**

26 U.S.C. § 7202 - Failure to Pay

Over Employment Taxes;

26 U.S.C. § 7206(1) - Filing a False

Tax Return

☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony
**PENALTY:**

26 U.S.C. § 7202 - 5 years prison, \$250,000 fine, 3 years supervised release, \$100 assessment; 26 U.S.C. § 7206(1) - 5 years prison, \$250,000 fine, 1 year supervised release, \$100 assessment

**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

INTERNAL REVENUE SERVICE

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person

Furnishing Information on MELINDA HAAG

THIS FORM

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y

(if assigned)

MICHAEL PITMAN, AUSA, Tax Division

 Name of District Court, and/or Judge/Magistrate Location  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION
**DEFENDANT - U.S.**

FRANK EUGENE GEMIGNANI, III

DISTRICT COURT NUMBER

**CR 14 328****DEFENDANT****IS NOT IN CUSTODY**
 1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges

 2) ☐ Is a Fugitive

 3) ☐ Is on Bail or Release from (show District)
**IS IN CUSTODY**
 4) ☐ On this charge

 5) ☐ On another conviction

 6) ☐ Awaiting trial on other charges

☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer been filed?

☐ Yes  
☒ No

If "Yes" give date filed

**DATE OF ARREST**

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

Month/Day/Year

**DATE TRANSFERRED TO U.S. CUSTODY**
☐ This report amends AO 257 previously submitted
**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**
☐ SUMMONS ☐ NO PROCESS\*

☒ WARRANT Bail Amount:

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

\*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: OAKLAND

UNITED STATES OF AMERICA,

V.

  
FRANK EUGENE GEMIGNANI, III

**CR 14 328**

DEFENDANT(S).

## INDICTMENT

26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes

26 U.S.C. § 7206(1) – Filing a False Tax Return

A true bill.

  
Foreman

Filed in open court this 19<sup>th</sup> day of

June 2014

  
Clerk

Bail, \$ no bail arrest warrant

  
Nathanael Cousins  
United States Magistrate Judge

FILED  
2014 JUN 19 P 1:35  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
JSW

MELINDA HAAG (CABN 132612)  
United States Attorney

FILED  
2014 JUN 19 P 1:34  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JSW

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANK EUGENE GEMIGNANI, III,

Defendant.

Criminal No. **14 328**

VIOLATIONS: 26 U.S.C. § 7202 – Failure  
to Pay Over Employment Taxes;  
26 U.S.C. § 7206(1) – Filing a False Tax  
Return

OAKLAND VENUE

INDICTMENT

The Grand Jury charges:

1. That beginning in or about 1991, and continuing until at least in or about 2012,  
within the Northern District of California, the Defendant,

FRANK EUGENE GEMIGNANI, III,  
a resident of San Leandro, California, conducted a business as a sole proprietorship under the  
name Pyzano's Pizzeria, a restaurant with its principal place of business in Castro Valley,  
California.

2. As the sole proprietor of Pyzano's Pizzeria, Defendant FRANK EUGENE  
GEMIGNANI, III, ("Defendant GEMIGNANI") exercised control over every aspect of Pyzano's

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Pizzeria's business affairs, including approving payments by the company and controlling all of its bank accounts.

3. As the sole proprietor of Pyzano's Pizzeria, Defendant GEMIGNANI had the responsibility to collect, truthfully account for, and pay over to the Internal Revenue Service ("IRS") payroll taxes withheld from his employees' paychecks.

4. During the period April 1, 2008, through December 31, 2010, Defendant GEMIGNANI, doing business as Pyzano's Pizzeria made thousands of dollars of expenditures for Defendant GEMIGNANI's personal benefit while, at the same time, failing to pay over to the IRS payroll taxes withheld from his employees' paychecks.

COUNT ONE: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

5. During the second quarter of the year 2008, ending June 30, 2008, Defendant GEMIGNANI deducted and collected from the total taxable wages of his employees federal income taxes and Federal Insurance Contributions Act taxes in the amount of approximately \$19,849.40. On or about July 15, 2008, in the Northern District of California, Defendant GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America for the quarter ending June 30, 2008.

All in violation of Title 26, United States Code, Section 7202.

COUNT TWO: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

6. During the third quarter of the year 2008, ending September 30, 2008, Defendant GEMIGNANI deducted and collected from the total taxable wages of his employees federal income taxes and Federal Insurance Contributions Act taxes in the amount of approximately \$23,373.34. On or about October 15, 2008, in the Northern District of California, Defendant GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America for the quarter ending September 30, 2008.

All in violation of Title 26, United States Code, Section 7202.

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1 COUNT THREE: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

2 7. During the fourth quarter of the year 2008, ending December 31, 2008, Defendant  
 3 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 4 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 5 \$22,959.36. On or about January 15, 2009, in the Northern District of California, Defendant  
 6 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 7 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 8 for the quarter ending December 31, 2008.

9 All in violation of Title 26, United States Code, Section 7202.

10 COUNT FOUR: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

11 8. During the first quarter of the year 2009, ending March 31, 2009, Defendant  
 12 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 13 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 14 \$19,648.84. On or about April 15, 2009, in the Northern District of California, Defendant  
 15 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 16 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 17 for the quarter ending March 31, 2009.

18 All in violation of Title 26, United States Code, Section 7202.

19 COUNT FIVE: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

20 9. During the second quarter of the year 2009, ending June 30, 2009, Defendant  
 21 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 22 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 23 \$16,887.06. On or about July 15, 2009, in the Northern District of California, Defendant  
 24 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 25 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 26 for the quarter ending June 30, 2009.

27 All in violation of Title 26, United States Code, Section 7202.

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1 COUNT SIX: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

2 10. During the third quarter of the year 2009, ending September 30, 2009, Defendant  
 3 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 4 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 5 \$16,177.53. On or about October 15, 2009, in the Northern District of California, Defendant  
 6 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 7 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 8 for the quarter ending September 30, 2009.

9 All in violation of Title 26, United States Code, Section 7202.

10 COUNT SEVEN: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

11 11. During the fourth quarter of the year 2009, ending December 31, 2009, Defendant  
 12 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 13 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 14 \$15,626.62. On or about January 15, 2010, in the Northern District of California, Defendant  
 15 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 16 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 17 for the quarter ending December 31, 2009.

18 All in violation of Title 26, United States Code, Section 7202.

19 COUNT EIGHT: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

20 12. During the first quarter of the year 2010, ending March 31, 2010, Defendant  
 21 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 22 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 23 \$14,359.52. On or about April 15, 2010, in the Northern District of California, Defendant  
 24 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 25 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 26 for the quarter ending March 31, 2010.

27 All in violation of Title 26, United States Code, Section 7202.

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1 COUNT NINE: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

2 13. During the second quarter of the year 2010, ending June 30, 2010, Defendant  
 3 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 4 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 5 \$11,360.80. On or about July 15, 2010, in the Northern District of California, Defendant  
 6 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 7 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 8 for the quarter ending June 30, 2010.

9 All in violation of Title 26, United States Code, Section 7202.

10 COUNT TEN: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

11 14. During the third quarter of the year 2010, ending September 30, 2010, Defendant  
 12 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 13 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 14 \$13,663.36. On or about October 15, 2010, in the Northern District of California, Defendant  
 15 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 16 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 17 for the quarter ending September 30, 2010.

18 All in violation of Title 26, United States Code, Section 7202.

19 COUNT ELEVEN: (26 U.S.C. § 7202 – Failure to Pay Over Employment Taxes)

20 15. During the fourth quarter of the year 2010, ending December 31, 2010, Defendant  
 21 GEMIGNANI deducted and collected from the total taxable wages of his employees federal  
 22 income taxes and Federal Insurance Contributions Act taxes in the amount of approximately  
 23 \$11,348.12. On or about January 15, 2011, in the Northern District of California, Defendant  
 24 GEMIGNANI did willfully fail to pay over to the IRS the federal income taxes and Federal  
 25 Insurance Contributions Act taxes withheld and due and owing to the United States of America  
 26 for the quarter ending December 31, 2010.

27 All in violation of Title 26, United States Code, Section 7202.

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1 COUNT TWELVE: (26 U.S.C. § 7206(1) – Filing a False Tax Return)

2 16. On or about October 17, 2008, in the Northern District of California, the  
3 Defendant

4 FRANK EUGENE GEMIGNANI, III,  
5 a resident of San Leandro, California, did willfully make and subscribe a U.S. Individual Income  
6 Tax Return for the Calendar year 2007, which was verified by a written declaration that it was  
7 made under the penalties of perjury and which he did not believe to be true and correct as to  
8 every material matter. That Income Tax Return, which was prepared and signed in the Northern  
9 District of California and was filed with the IRS, reported total payments for the year of \$8,283,  
10 whereas, as he then and there knew and believed, such amount was actually lower than \$8,283.

11 All in violation of Title 26, United States Code, Section 7206(1).

12  
13 A TRUE BILL

14 June 19, 2014  
15 DATE

14 Nancy J. Peterson  
15 FOREPERSON

16  
17 MELINDA HAAG  
18 United States Attorney

19 J. Douglas Wilson  
20 J. DOUGLAS WILSON  
21 Chief, Criminal Division

22 Approved as to Form

23 M. G. Pitman  
24 MICHAEL G. PITMAN  
25 Assistant United States Attorney,  
26 Tax Division  
27  
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