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News Release

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Owner of nursing professionals company convicted of failing to pay employment taxes

After approximately three hours of deliberation, a federal jury this week convicted a 59-year-old Livingston, Mont., man for failing to pay over employment taxes.

On Nov. 17 in St. Paul, a jury found Francis Leroy McLain guilty on nine counts of failure to account for and pay over employment taxes. McLain's trial lasted nine days, and United States District Court Judge Patrick Schiltz will determine his sentence at a future date.

McLain was indicted on Jan. 8, and his indictment states that he willfully failed to account for and pay over to the Internal Revenue Service federal income taxes on the wages of employees of Kirpal Nurses and those employees' share of Federal Insurance Contribution Act taxes. The criminal conduct spanned nine calendar quarters, and the federal taxes not accounted for or paid over total over \$500,000.

From approximately 2001 through 2004, McLain controlled Kirpal Nurses, d/b/a as Kind Hearts, a company that supplied nurses and other nursing professionals to nursing homes and other health care facilities on a temporary basis. The company was based in Minneapolis.

Prior to starting Kirpal Nurses, McLain owned and operated several other temporary nursing services beginning in 1987, including Lifelines Care, Inc., Lifelines Cooperative Care, Inc., and Cooperative Nurses, Inc.

In 1995, McLain brought several civil lawsuits against the U.S. claiming that the nursing professionals who worked for him were independent contractors rather than employees and that therefore, there was no requirement to pay employment taxes. The U.S. disagreed and countersued McLain. The civil lawsuits were settled in 1998, and, as part of that settlement, McLain agreed to withhold and pay over employment taxes for the nursing professionals who worked for any of his businesses.

McLain took steps to hide his ownership and involvement in Kirpal Nurses by using others

as the owners and operators, including his daughter. From June 1999 through December 2001, McLain arranged to pay the IRS some but not all of the employment taxes.

In May 2002, Kirpal Nurses was sent a notice from the Minnesota Department of Health advising of a change in state law requiring all nursing professionals to be treated as employees and not as independent contractors. In December 2002, McLain provided the department with registration forms, which identified a financial institution in which employment tax withholdings were purportedly deposited. McLain asserted that employment taxes were being withheld for all Kirpal employees, including nursing professionals.

In December 2002, Kirpal Nurses provided the IRS with a single payment of approximately \$4,200 in employment taxes for the calendar quarter ending on Dec. 31, 2002. Kirpal failed to make any employment tax payments to the IRS after that.

From January 2003 through January 2005, Kirpal Nurses did issue W-2 forms to some of its employees, but failed to file any of them with the IRS. McLain failed to file Forms 941, the employer's quarterly federal tax return, as well.

This case is the result of an investigation by the IRS-Criminal Investigation Division, and is being prosecuted by Assistant U.S. Attorneys David M. Genrich and Michael L. Cheever.