

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
RICHARD W. NAGEL
CLERK OF COURT

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US DISTRICT COURT
SOUTHERN DIST OHIO
WESTERN DIV DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

FESUM OGBAZION and
KYLE WADE

Defendant.

CASE NO.

JUDGE

INDICTMENT

26 U.S.C. § 7212(a) & 18 U.S.C. § 2

18 U.S.C. § 1349

18 U.S.C. § 1343 & 2

18 U.S.C. § 1956(a)(1)(A)(ii)

18 U.S.C. § 1344

26 U.S.C. § 7201

26 U.S.C. § 7202

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TIMOTHY S. BLACK

THE GRAND JURY CHARGES THAT:

Introduction

At all times relevant to this Indictment:

The Parties and Businesses

1. Defendant FESUM OGBAZION, was a resident of Beaver Creek, Ohio.
2. Defendant KYLE WADE was a resident of West Chester, Ohio.
3. Defendant OGBAZION owned, operated and controlled ITS Financial, LLC ("ITS Financial"). ITS Financial was headquartered in Dayton, Ohio and was the national franchisor of Instant Tax Service ("ITS"), a nationwide tax preparation franchise business started by Defendant OGBAZION in 2004 and marketed by ITS Financial throughout the United States. In 2009, ITS claimed over 1,100 different franchises were operating nationwide. In or about 2012, ITS Financial relocated to Beaver Creek, Ohio.

4. TCA Financial, LLC ("TCA Financial") was founded, operated, and solely owned by Defendant OGBAZION. TCA Financial was the holding company for ITS Financial.

5. Tax Tree, LLC ("Tax Tree") was operated and solely owned by Defendant OGBAZION. Tax Tree was an entity created and operated to purportedly finance loan products for ITS customers.

6. TaxMate, LLC, ("TaxMate") was operated and solely owned by Defendant OGBAZION.

7. Defendant WADE served as the Vice President of Franchising for ITS as well as owned and operated approximately four ITS franchises in the greater Dayton, Ohio area.

8. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury, responsible for administering and enforcing the tax laws of the United States.

The IRS's E-File Program

9. The tax laws of the United States required every citizen and resident of the United States, who received gross income in excess of the minimum filing amount established by law for a particular tax year, to annually file with the IRS an individual income tax return ("Forms 1040, 1040A, or 1040EZ") for that tax year, reporting their annual income, deductions and any tax credits they may be entitled to receive.

10. To make it easier for taxpayers to file their tax returns, and to expedite the processing of tax refunds, the IRS implemented its E-file program which permitted taxpayers to electronically transmit tax returns over the internet to the IRS. One feature of the E-file program was that taxpayers who electronically filed, unlike those who mailed their paper returns to the

IRS, were not required to transmit copies of their Wages and Tax Statements ("Forms W-2") with the returns.

11. For those opting for the E-File program, individual taxpayers filed their annual Forms 1040, 1040A, or 1040EZ electronically using one of many commercial tax return preparation services, or Electronic Return Originator ("ERO") companies. After an individual's federal income tax return was prepared by a tax return preparation service, the service electronically transmitted the tax return to the IRS through a secure electronic channel.

12. To guard against the potential for fraud and abuse in the E-File program, the IRS instituted a series of rules, enforced by periodic audits, outlined primarily in IRS Publication 1345. EROs were required to follow the rules and regulations promulgated by the IRS in IRS Publication 1345 when preparing and electronically filing federal income tax returns.

13. The strict rules and prohibitions which EROs were required to follow to prevent fraud and abuse included:

(a) IRS Notice 1383 and IRS Publication 1345 which provided that authorized IRS E-File providers who submitted electronic returns to the IRS prior to the receipt of all Forms W-2, W-2G, and 1099-R from a taxpayer were subject to potential sanctions, to include suspension of registered Electronic Filing Identification Numbers ("EFINs") and expulsion from the E-File program;

(b) If a taxpayer used an ERO to prepare and electronically file their tax return, the taxpayer was required to sign and date an IRS E-File Signature Authorization Form ("Form 8879"), attesting to the truth and accuracy of their return under the penalties of perjury, no more than three (3) days prior to the date when the tax return was transmitted to the IRS. IRS Form 8879 gave the ERO

written authorization to electronically file a taxpayer's tax return with the IRS. EROs were strictly prohibited from filing tax returns without authorization of the taxpayer;

(c) Not only did taxpayers have to sign Form 8879, EROs also were required sign the form for each tax return they prepared, which required them to attest, under the penalties of perjury, that they had followed the procedures outlined in IRS Publication 1345;

(d) EROs were required to preserve and maintain client files which must include, among other things, a copy of taxpayers' Forms W-2 for the year; and

(e) EROs were strictly prohibited from transferring EFINs to other individuals. For an ERO to prepare and file federal income tax returns with the IRS the company must have first obtained from the IRS an EFIN. EFINs enabled the IRS to monitor, track, and regulate EROs that prepared and filed income tax returns on the behalf of taxpayers. EFIN applications stated on their face that they were "not transferable."

14. The IRS generally began accepting electronically filed tax returns from taxpayers and EROs on or about the third week of January following the year just ending. This date signified the beginning of "tax filing season," which concluded on or about April 15th of that same year.

15. Upon receipt of a filed tax return by the IRS, showing that a refund was due to a particular taxpayer, if that taxpayer's tax return was filed by an ERO, the IRS electronically issued a tax refund, in the taxpayer's name, to the bank account designated on the filed tax return by an electronic routing number.

16. In order to facilitate the receipt of a taxpayer's tax refund, for a fee, an ERO would set up for the taxpayer a Return Transfer bank account, or "RT." ITS provided this service.

17. Often an ERO, such as ITS, deducted its fees for preparing and transmitting taxpayers' tax returns to the IRS from taxpayers' tax refunds.

18. Defendant OGBAZION executed franchise agreements with various individuals permitting them to use the ITS name to open and operate tax return preparation businesses nationwide and function as EROs. Under these Franchise Agreements ITS franchises were required to remit to ITS Financial, headquartered in Dayton, Ohio, various fees on a regular basis to include: advertising/marketing fees; service bureau fees; royalty fees; and other operating fees.

19. All federal income tax refunds remitted by the IRS for ITS customers were deposited into bank accounts controlled by ITS Financial and Defendant OGBAZION. After ITS Financial deducted its fees from these tax refund proceeds, the remaining customer fees were paid over to the ITS franchise owner, and the net tax refund made payable to the ITS customer/taxpayer.

20. In order to facilitate the electronic preparation and filing of federal income tax returns by ITS Financial and ITS franchises, ITS Financial required all of its franchises to use a uniform tax return preparation software package. This software enabled ITS Financial and ITS franchises to electronically prepare and file income tax returns, communicate, transfer funds, and deduct fees from customers' tax refunds.

Loan Products

21. Some EROs offered loans to taxpayers based on taxpayers' expected income tax refunds. One such loan was referred to an Instant Cash Loan ("ICL"), or "holiday loan."

Another type of loan was the Refund Anticipation Loan, or “RAL,” which was collateralized by taxpayers’ expected income tax refund. ITS offered both ICLs and RALs to its customers and advertised these products nationwide.

22. An ICL was offered to taxpayers based on a preliminary, or estimated, tax return prepared by the ERO prior to the commencement of the income tax filing season, usually in December of the calendar year for which tax returns will be filed during the upcoming tax filing season.

23. When taxpayers did not have all of their final income information when an ICL was applied for, such as their employer issued Form W-2 reflecting wages earned and taxes withheld for the calendar year, ICL lending decisions relied upon taxpayers’ most recent paystubs.

24. The filing of preliminary, or estimated, ICL income tax returns with the IRS violated the rules contained in IRS Publication 1345. This practice is called “pay stub filing” in the tax return preparation industry.

25. In order to “lend” customers an ICL, EROs typically contracted with a third party lending institution. It was the hope and expectation of EROs that offered ICLs to their customers that customers would have their income tax returns prepared and filed by those EROs, but this was not required. If EROs that provided ICLs to customers also prepared and filed those customers’ income tax returns, the ICLs were repaid from the proceeds of the income tax refunds, as were fees associated with the ICLs. ITS offered ICLs to its customers and deducted its fees in this manner.

26. The RAL differed from the ICL in that RALs were applied for after the start of the tax “filing season,” and were based on taxpayers’ actual income tax return for the year in

question. When taxpayers' tax refunds were received, the RAL was paid back to the lending institution. The RAL also relied upon a third party lender to provide funding for the loan. Any fees owed to the ERO and RAL lender were also deducted from the proceeds of the income tax refund received. ITS offered RALs to its customers and deducted its fees in this manner.

COUNT ONE

(Corrupt Endeavor to Impede the Due Administration of the Internal Revenue Code)

27. The factual allegations contained in Paragraphs 1 through 26 of the Introduction of this Indictment are realleged and incorporated herein as if copied verbatim.

28. Between in or about January 1, 2004, and in or about November 1, 2012, in the Southern District of Ohio and elsewhere, Defendants FESUM OGBAZION and KYLE WADE did corruptly endeavor to obstruct and impede the due administration of the internal revenue laws, Title 26 of the United States Code, by engaging in a scheme to obstruct and impede the IRS ("the scheme to obstruct").

29. It was part of the scheme to obstruct that from in or about January 1, 2004, to in or about November 1, 2012, Defendants FESUM OGBAZION and KYLE WADE directed, caused, and facilitated the: (1) preparation and filing with the IRS of Forms 1040, 1040A, or 1040EZ, without proper authorization from taxpayers, and in doing so relied upon taxpayers' paycheck stubs, rather than employer-issued Forms W-2, in violation of IRS Publication 1345; (2) preparation and signing of false Forms 8879 by ITS tax return preparers stating that they had followed and abided by the rules and regulations contained in IRS Publication 1345; (3) back-dated and forward-dated Forms 8879 for ITS customer/taxpayers so that the date of the form would be within three days prior to the filing of the corresponding Forms 1040, 1040A, or 1040EZ; (4) preparation and filing with the IRS of false and fraudulent Forms 1040, 1040A, or

1040EZ, for ITS customer/taxpayers that included false and inflated Schedule C income in an attempt to increase the Earned Income Tax Credit ("EITC") and income tax refund for those customer/taxpayers; (5) creation of counterfeit Forms W-2, in the names of ITS customer/taxpayers, using tax preparation software, maintaining those same false Forms W-2s in customer files in the event of an IRS audit, and presenting these fraudulent Forms W-2 to IRS auditors; and (6) distribution and use of "back-up" EFINs to franchisees who did not apply for their own EFIN or had their EFIN suspended by the IRS and lending institutions.

30. Specifically, in furtherance of the scheme to obstruct, Defendants FESUM OGBAZION and KYLE WADE engaged in and caused to be engaged in, the following acts:

- (a) In or about 2004 and continuing to in or about 2007, Defendant OGBAZION instructed an ITS employee to electronically file large volumes of partially completed ITS customers' Forms 1040, 1040A, or 1040EZ, without customers' signatures and authorizations, on the first day of the "tax filing season" when the IRS began accepting electronically filed income tax returns;
- (b) In or about 2004 and continuing to in or about 2007, Defendant OGBAZION instructed ITS employees to back-date IRS Forms 8879, IRS E-file Signature Authorization, for ITS customers to make it appear that ITS customers had signed and authorized the electronic filing of their income tax returns *before* the returns were filed, when in fact as Defendant well knew and believed this had not occurred, and that the Forms 8879 were not timely signed by ITS customers;
- (c) In or about 2006, and continuing to in or about 2012, Defendants OGBAZION and WADE, being informed by several ITS employees that many ITS customers were complaining that their Forms 1040, 1040A, or 1040EZ, were

being filed by ITS without customers' authorization, nevertheless encouraged this practice;

(d) In or about 2005 and 2006, Defendant OGBAZION directed an ITS franchise manager in Columbus, Ohio to print counterfeit Forms W-2 for ITS customers using tax preparation software, instructed the employee on how to make the counterfeit Forms W-2 look legitimate, and instructed the employee to place the counterfeit forms in ITS customers' files;

(e) In or about 2005 and continuing to in or about 2010, Defendant WADE directed an employee at the Hamilton, Ohio ITS location to file customers' Forms 1040, 1040A, or 1040EZ, before employer issued Forms W-2 were received, print counterfeit Forms W-2 for these customers, alter the forms to make them look legitimate, and place the counterfeit forms in ITS customers' files;

(f) In or about 2006, and continuing to in or about 2012, Defendants OGBAZION and WADE instructed ITS employees in Ohio, Missouri, Indiana, and elsewhere to falsely and fraudulently inflate, and increase, ITS customers' Schedule C income in order to increase the customers' available EITC. This was done in order to increase the fees ITS could charge and collect from these customers;

(g) In or about 2007, Defendant OGBAZION directed an ITS franchise manager in Columbus, Ohio to electronically file a large batch of Forms 1040, 1040A, or 1040EZ for ITS customers for whom no employer issued Forms W-2s had been received, and who had applied for and been denied an ITS pre-season

ICL Holiday Loan. Under Defendant's direction, these income tax returns were filed by his employee without any authorization by the underlying taxpayers;

(h) In or about November 2008, Defendants OGBAZION and WADE directed, organized, and participated in a training seminar for ITS franchise owners at WADE's ITS franchise location in Middletown, Ohio, "the Stub Shop," in which Defendants instructed ITS franchise owners and employees on how to file Forms 1040, 1040A, or 1040EZ for ITS customers before customers' employer issued Forms W-2 were received using the customers' year end pay stubs, in violation of IRS policies and regulations, particularly IRS Publication 1345. This training included using fraudulent, and counterfeit Employer Identification Numbers for ITS customers' employers;

(i) In or about November 2008, and continuing to in or about 2012, Defendants OGBAZION and WADE, in order to make counterfeit Forms W-2 appear legitimate, instructed ITS franchise owners and employees to cut off the bottom of counterfeit Forms W-2 printed using tax preparation software where it was stated that the form in question was a "replacement form;"

(j) In or about November 2008, and continuing to in or about 2012, Defendants OGBAZION and WADE instructed and directed ITS franchise owners and employees to falsely and fraudulently sign IRS Form 8879, IRS E-file Signature Authorization Form, certifying in Part III that the federal income tax returns prepared and filed by the signatory were prepared and filed with the authorization of the underlying taxpayer, and in accordance with IRS Publication

1345, when in fact Defendants and signatories well knew and believed that this statement was false;

(k) In or about 2008, the manager of the ITS franchise in St. Louis, Missouri, in preparation for an IRS audit, was instructed by ITS management to place counterfeit Forms W-2 in ITS customers' files, forge customers' signatures, and falsely and fraudulently create anything that was missing from customers' files and place those items in the file to create the appearance that all relevant IRS rules, policies and regulations had been followed in the preparation and filing of federal income tax returns by the ITS franchise;

(l) In or about 2009, Defendant OGBAZION was advised by the president of ITS, whose identity is known to the Grand Jury, that ITS should try to shift business away from "pay stub filing" of federal income tax returns. In response the Defendant stated that the ITS president did not know the tax return preparation business and that ITS would continue to file federal income tax returns before employer issued Forms W-2 were received because this is how they get a "jump" on the competition and generate more business;

(m) In or about 2010, and continuing to in or about 2012, Defendant OGBAZION directed an ITS franchise owner in Toledo, Ohio to print out counterfeit customer Forms W-2 using commercial tax preparation software and place those counterfeit Forms W-2 in ITS's customers' files to deceive IRS Auditors into believing that they were employer issued, actual Forms W-2;

(n) In or about 2010, and continuing to in or about 2012, Defendant OGBAZION instructed ITS franchise owners in Indianapolis and Ohio how to make counterfeit Forms W-2 appear as legitimate employer issued Forms W-2;

(o) In or about 2010, and continuing to in or about 2012, Defendant OGBAZION instructed ITS franchise owners in Indianapolis and Ohio to file Forms 1040, 1040A, or 1040EZ for ITS customers before employer issued Forms W-2 were received, using customers' year end pay stubs, in violation of IRS policies and regulations, particularly IRS Publication 1345;

(p) On or about November 14, 2010, Defendant OGBAZION stated to several ITS employees, verbally and by email, that in preparation for an IRS audit of an ITS franchise the employees should, "have people sign the due diligence for self-employment, have people sign all blank docs, and print W-2s from [software company] if you don't have them;"

(q) On or about February 22, 2010, Defendant OGBAZION directed an ITS franchise owner by email, "While things are slow make sure your employees go thru [sic] all the accepted returns and make sure everything has been signed and all W2s [sic] are in the folder. Even if they're printed from [software company]. I'm sure you'll have an IRS visit soon;"

(r) In or about 2010, Defendants OGBAZION and WADE directed an ITS franchise manager in Middletown, Ohio to: file ITS customers' United States Income Tax Returns, Forms 1040, before employer issued Forms W-2 were received; print and use counterfeit Forms W-2; alter counterfeit Forms W-2 to make them look legitimate; back-date Forms 8879; alter the ITS franchise's

internal electronic audit file to make it appear that ITS customer income tax returns were filed *after* customer authorization to electronically file their tax returns had been obtained, when in fact it had not; and falsely and fraudulently inform IRS auditors that ITS employees did not have access to ITS franchises' internal electronic audit file.

(s) In or about September 2010, Defendant WADE, at his Middletown, Ohio ITS franchise, in preparation for an IRS audit of his franchise, falsely and fraudulently endorsed ITS customers' signatures on several forms to create the appearance that the customers had timely signed these forms.

(t) In or about 2011, a taxpayer in Chicago, Illinois had his/her Forms 1040, 1040A, or 1040EZ for the 2010 tax year prepared by an ITS franchise in Chicago in which the ITS employee falsely and fraudulently increased the taxpayer's Schedule C income from \$1,600 to \$6,300 knowing full well that the taxpayer had not provided this information;

(u) In or about 2011, a taxpayer in Chicago, Illinois had his/her Forms 1040, 1040A, or 1040EZ, for the 2010 tax year prepared by an ITS franchise in Chicago in which the ITS employee falsely and fraudulently increased the taxpayer's Schedule C income from \$1,200 to \$9,300 knowing full well that the taxpayer had not provided this information;

(v) In or about 2011, a taxpayer in Indiana had his/her Forms 1040, 1040A, or 1040EZ, for the 2010 tax year prepared by an ITS franchise in Indianapolis in which the ITS employee falsely and fraudulently increased the taxpayer's

Schedule C income from \$5,200 to \$9,997 knowing full well that the taxpayer had not provided this information;

(w) In or about 2011, a taxpayer in the St. Louis, Missouri area had his/her Forms 1040, 1040A, or 1040EZ, for the 2010 tax year prepared at an ITS franchise in St. Louis in which the ITS employee falsely and fraudulently reported the taxpayer's Schedule C income as \$8,230 knowing full well that the taxpayer had not provided this information;

(x) In or about 2011, a taxpayer in the St. Louis Missouri had his/her Forms 1040, 1040A, or 1040EZ, for the 2010 tax year prepared at an ITS franchise in St. Louis in which the ITS employee falsely and fraudulently reported the taxpayer's Schedule C income as \$13,500 knowing full well that the taxpayer had not provided this information;

(y) In or about 2006, and continuing until in or about 2012, Defendants OGBAZION and WADE directed an ITS employee at ITS Headquarters in Dayton, Ohio to monitor and maintain a list of Electronic Filer Identification Numbers ("EFINs") to be distributed to ITS franchise owners and employees to use to file federal income tax returns in the event their EFIN was suspended or revoked by the IRS;

(z) In or about 2011, Defendant OGBAZION directed an ITS employee to provide a "back up" EFIN to an ITS franchise owner whose EFIN had been revoked by the IRS; and

(aa) In or about 2007, and continuing until in or about 2012, Defendant WADE maintained on his lap top a list of "back up" EFINs for use by ITS franchise

owners and employees in the event their EFIN was suspended or revoked by the IRS.

All in violation of Title 26, United States Code, Section 7212(a) and Title 18 United States Code, Section 2.

COUNT TWO

(Conspiracy to Commit Wire Fraud)

31. The factual allegations contained in Paragraphs 1 through 26 and 29 through 30 of this Indictment are realleged and incorporated herein as if copied verbatim.

32. Beginning in or about December 2009, and continuing up to and including on or about November 1 2012, in the Southern District of Ohio and elsewhere, Defendants FESUM OGBAZION and KYLE WADE, and other persons known and unknown to the Grand Jury, intentionally, unlawfully, and knowingly did combine, conspire, confederate and agree between and among themselves to devise a scheme and artifice to defraud and obtain funds by means of false and fraudulent pretenses through the electronic transmission by wire of writings, signs, signals, pictures and sounds in interstate and foreign commerce, in violation of 18 U.S.C. § 1343.

Objective of the Conspiracy

33. It was the object of the conspiracy for Defendants OGBAZION and WADE to generate loan and tax return preparation fees for ITS and its franchises by luring customers into ITS franchises through false and fraudulent means, to wit: advertising that ITS could offer customers loans in advance of their expected federal income tax refunds, knowing full well that in 2010 and 2011 ITS did not have a relationship with an independent lender that could provide funding for the loans advertised.

Manner and Means

34. It was part of the conspiracy and scheme and artifice to defraud that under the direction of Defendants OGBAZION and WADE, ITS Financial and ITS franchises purposely targeted low-income and unsophisticated taxpayers, who needed cash quickly, for their RT, ICL, and RAL lending products.

35. It was further part of the conspiracy and scheme and artifice to defraud that under the direction of Defendants OGBAZION and WADE, ITS local stores, after obtaining customers' personal and confidential identifying information, under the guise of applying for an ICL and RAL lending product, prepared and electronically filed with the IRS, in interstate commerce, Forms 1040, 1040A, or 1040EZ for customers without their authorization, without accurate and truthful IRS Forms 8879 signed by customers, and without first obtaining customers' employer issued Forms W-2.

Filing Income Tax Returns Without Customer Authorization

36. It was further part of the conspiracy and scheme and artifice to defraud that Defendant WADE organized and operated a training seminar termed the "stub shop" in which he and others instructed ITS staff, ITS franchise owners, and ITS franchise employees on how to prepare and file federal income tax returns for ITS customers who had not provided ITS with an employer issued Form W-2.

37. It was further part of the conspiracy and scheme and artifice to defraud that under the direction of Defendants OGBAZION and WADE, ITS used false and deceptive advertising for its ICL and RAL lending products to lure customers into its local stores in order to obtain their personal and confidential identifying information for the purpose of using this information to prepare and file income tax returns in those customers' names.

38. It was further part of the conspiracy and scheme and artifice to defraud that Defendant OGBAZION instructed ITS staff, when filing income tax returns with the IRS for customers who had not provided ITS with an employer issued Form W-2, to utilize an Employer Identification Number ("EIN") list to place an EIN on those customers' tax returns that did not necessarily correspond with the customers' actual employers, but that would be accepted by the IRS.

39. It was further part of the conspiracy and scheme and artifice to defraud that at the direction of Defendant OGBAZION, ITS's fees for preparing and filing income tax returns for ITS customers, whether authorized by the customer or not, were deducted from customers' income tax refund proceeds prior to the net income tax refund being paid over to the customer.

40. It was further part of the conspiracy that in 2011, Defendant OGBAZION operated a bank account at Urban Bank and Trust wherein ITS customers' tax refunds would be deposited. Defendant OGBAZION directed that ITS's fees be subtracted from the gross tax refunds and transferred to additional bank accounts controlled by Defendant OGBAZION. ITS customers' remaining income tax refunds would be placed on a debit card for their use.

Loan Fraud

41. It was further part of the conspiracy and scheme and artifice to defraud that in 2010 and 2011, under the direction of Defendants OGBAZION and WADE, ITS represented to potential customers that they could obtain funds in advance of their federal income tax refund by applying for an ICL or RAL with ITS, when in fact Defendants OGBAZION and WADE, then and there full well knew and believed that ITS, and its local stores, had very little if any ability to provide customers with the funds promised. This scheme was referred to internally by some ITS employees as the "RAL denial program."

42. It was further part of the conspiracy and scheme and artifice to defraud that in 2010 and 2011, under the direction of Defendants OGBAZION and WADE, ITS franchises charged their customers "bank fees" ranging from \$20 to \$50 for ICL and RAL lending products which they then and there well knew and believed they did not have the capacity to provide.

43. It was further part of the conspiracy and scheme and artifice to defraud that in 2010 and 2011, under the direction of Defendants OGBAZION and WADE, ITS franchises, charged ITS customers a fee called the "Service Bureau Fee" which was paid over to ITS Financial. The "Service Bureau Fee" was internally called a "junk fee" by ITS employees and ranged from \$100 per tax return in 2010 to \$30 per tax return in 2011.

44. It was further part of the conspiracy and scheme and artifice to defraud that in 2010, under the direction of Defendants OGBAZION and WADE, ITS collected approximately \$540,000 in "bank fees" and \$12,203,620 in "Service Bureau Fees" from approximately 172,596 ITS customers in connection with the preparation of federal income tax returns and the sale of ICLs and RALs.

45. It was further part of the conspiracy and scheme and artifice to defraud that in 2011, under the direction of Defendants OGBAZION and WADE, ITS franchises collected approximately \$1,300,00 in "bank fees" and \$1,860,060 in "Service Bureau Fees" from approximately 139,224 ITS customers in connection with the preparation of federal income tax refunds and the sale of ICLs and RALs.

46. It was further part of the conspiracy and scheme and artifice to defraud that under the direction of Defendants OGBAZION and WADE "bank fees" and "Service Bureau Fees" collected from ITS customers' federal income tax refunds were transferred electronically by wire, in interstate commerce, to bank accounts owned and controlled by Defendants

OGBAZION and WADE, or to bank accounts controlled by OGBAZION and WADE through designated agents, nominees, and assignees.

47. It was further part of the conspiracy and scheme and artifice to defraud that Defendants OGBAZION and WADE, after being informed that ITS would not have any funding to offer ICL and RAL lending products to its customers for the 2010 tax preparation season, directed ITS staff, and advertising outlets, to continue to advertise ICLs and RALs nationwide.

48. It was further part of the conspiracy and scheme and artifice to defraud that on or about January 13, 2010, Defendant WADE directed ITS headquarters senior staff not to inform ITS franchise owners that ITS did not have any funding available to provide RALs to ITS customers for the 2010 tax filing season.

49. It was further part of the conspiracy and scheme and artifice to defraud that in or about December 2010 and thereafter, Defendants OGBAZION and WADE, for the 2011 tax filing season, represented to ITS franchises, ITS employees and ITS customers that Tax Tree was an independent third party lender that would be funding ICL and RAL lending products to ITS customers knowing full well that these representations were false.

50. It was further part of the conspiracy and scheme and artifice to defraud that in or about December 2010 and thereafter, Defendants OGBAZION and WADE, during the 2011 tax filing season, directed that "bank fees" were to be deducted from ITS customers' federal income tax refunds for Tax Tree for ICL and RAL lending products knowing full well that Tax Tree did not have the resources nor capacity to fund all ITS customers' ICL and RAL applications, and that the overwhelming majority of the ITS ICL and RAL applications were intended to be summarily denied.

All in violation of Title 18, United States Code, Section 1349.

COUNTS THREE THROUGH SEVEN

(Wire Fraud)

51. The factual allegations contained in Paragraphs 1 through 26, 29 through 30, and 33 through 50 of this Indictment are realleged and incorporated herein as if copied verbatim.

52. ICS is a prepaid card servicing company whose identity is known to the Grand Jury that provided a variety of financial services to its customers. In or about 2011, ITS contracted with ICS to provide debit cards to ITS customers and collect and transmit ITS fees.

53. Beginning in or about April 2010 and continuing until as late as November 1, 2012, on or about the dates indicated below, the Defendants FESUM OGBAZION and KYLE WADE, in the Southern District of Ohio and elsewhere, devised, intended to devise, and aided and abetted others in devising, a scheme and artifice to defraud and to obtain money by false pretenses as described in paragraphs 33 through 50 above.

54. In furtherance of, and for the purpose of executing such scheme and artifice to defraud, in the Southern District of Ohio and elsewhere, the Defendants FESUM OGBAZION and KYLE WADE, transmitted and caused to be transmitted by means of wire communications, as more particularly described below, in interstate commerce, certain writings, signs signals, pictures, and sounds:

| Count | Description of Wire Transmission | Date of Wire Transmission | Amount of Wire Transmission |
|-------|---|---------------------------|-----------------------------|
| THREE | Deposit to ICS Account at National Bank of Commerce | January 26, 2011 | \$1,262,197 |
| FOUR | Deposit to ICS Account at National Bank of Commerce | January 28, 2011 | \$1,906,199 |
| FIVE | Deposit to ICS Account at National Bank of Commerce | January 31, 2011 | \$17,740,900 |

| Count | Description of Wire Transmission | Date of Wire Transmission | Amount of Wire Transmission |
|-------|---|---------------------------|-----------------------------|
| SIX | Deposit to ICS Account at National Bank of Commerce | February 7, 2011 | \$4,000,000 |
| SEVEN | Deposit to ICS Account at National Bank of Commerce | February 11, 2011 | \$898,615 |

All in violation of Title 18, United States Code, Section 1343 and 2.

COUNTS EIGHT THROUGH THIRTEEN

(Money Laundering)

55. The factual allegations contained in Paragraphs 1 through 26, 29 through 30, 33 through 50, and 52 through 53 of this Indictment are realleged and incorporated herein as if copied verbatim.

56. Integrated Capital, LLC was a Maryland corporation used by the Defendant OGBAZION to receive, disburse, and conceal ITS proceeds. Integrated Capital had a bank account at Bank of America under the signature authority of a third party named N.B. whose identity is known to the Grand Jury.

57. In or about 2011, as more fully described below, in Southern District of Ohio and elsewhere the defendant,

FESUM OGBAZION,

did knowingly conduct, attempt to conduct, and cause to be conducted, financial transactions, to wit: the transfer of ITS fee income to a bank account in the name of Integrated Capital, LLC, involving the proceeds of a specified unlawful activity, specifically wire fraud, knowing the transactions were designed to engage in conduct intended to violate Title 26, United States Code Section 7201:

| Count | Description of Wire Transmission | Date of Wire Transmission | Amount of Wire Transmission |
|-----------------|---|----------------------------------|------------------------------------|
| EIGHT | Transfer from ICS Account at National Bank of Commerce to Integrated Capital Account at Bank of America | January 31, 2011 | \$149,800 |
| NINE | Transfer from ICS Account at National Bank of Commerce to Integrated Capital Account at Bank of America | January 31, 2011 | \$227,522 |
| TEN | Transfer from ICS Account at National Bank of Commerce to Integrated Capital Account at Bank of America | February 8, 2011 | \$24,734 |
| ELEVEN | Transfer from ICS Account at National Bank of Commerce to Integrated Capital Account at Bank of America | February 8, 2011 | \$36,867 |
| TWELVE | Transfer from ICS Account at National Bank of Commerce to Integrated Capital Account at Bank of America | February 8, 2011 | \$1,546,550 |
| THIRTEEN | Transfer from ICS Account at National Bank of Commerce to Integrated Capital Account at Bank of America | February 15, 2011 | \$504,547 |

All in violation of Title 18, United States Code, Section 1956(a)(1)(A)(ii).

COUNT FOURTEEN

(Bank Fraud)

58. The factual allegations contained in Paragraphs 1 through 26, 29 through 30, 33 through 50, 52 through 53, and 56 of this Indictment are realleged and incorporated herein as if copied verbatim.

59. On or about January 10, 2007, the Defendant, FESUM OGBAZION, devised a scheme and artifice to defraud and to obtain money by false pretenses owned by or under the custody or control of HSBC Bank, an FDIC insured financial institution, by means of materially false or fraudulent pretenses, representations, or promises.

60. It was part of the scheme and artifice that the Defendant OGBAZION instructed an ITS employee to re-print 26 HSBC bank checks, originally issued to ITS customers as Refund Anticipation Loans secured by those customers' expected federal income tax refund, and forge those customers' signatures on the back of the HSBC bank checks.

61. On or about January 10, 2007, in the Southern District of Ohio, the Defendant, FESUM OGBAZION, executed the scheme and artifice as set forth above, in that the Defendant gave the 26 forged HSBC bank checks, totaling \$32,000, to his Chief Financial Officer with instructions to deposit them into the ITS Financial operating account, which the Chief Financial Officer subsequently did and which funds were used to pay ITS Financial outstanding obligations.

All in violation of Title 18, United States Code Section 1344.

COUNT FIFTEEN

(Evasion of Payment)

62. The factual allegations contained in Paragraphs 1 through 26, 29 through 30, 33 through 50, 52 through 53, 56, and 59 through 60 of this Indictment are realleged and incorporated herein as if copied verbatim.

63. Burnett Plaza Developers, LLC ("BPD") was a company in Toledo, Ohio that operated nonresidential properties. From in or about February 2008 to in or about September 2010, Defendant OGBAZION held a 33% interest in BPD.

64. Northwest Plaza Developers, LLC ("NPD") was a real estate company in Toledo, Ohio. From in or about June 2007 to in or about September 2010, Defendant OGBAZION held a 33% interest in NPD.

65. Devonshire Fund Group, LLC ("DFG") was a real estate development company in Whitehouse, Ohio. Beginning in or about September 2010, Defendant OGBAZION held a 0.667% interest in DFG.

Payroll Taxes

66. Employers are required to withhold, account for, and pay over to the IRS a variety of taxes from employee wages, collectively referred to as "Payroll Taxes." These taxes were: Federal Income Tax Withholding ("Withholding Taxes") and Federal Insurance Contribution Act taxes ("FICA Taxes"), as more particularly described below:

(a) Withholding Taxes: In general, an employer must deduct and withhold income tax on the amount of wages that actually or constructively are paid to its employees, and pay over those withholding taxes to the IRS; and

(b) FICA Taxes: The FICA tax is comprised of two elements: old-age, survivor and disability insurance, commonly referred to as "Social Security," and health insurance, commonly referred to as "Medicare." Social Security taxes are used to fund retirement and disability benefits, while Medicare taxes are used to provide health and medical benefits for the aged and disabled. An employer must deduct FICA taxes on the amount of wages that actually or constructively are paid to its employees, and pay over those FICA taxes to the IRS.

67. To account for payroll taxes that must be paid to the IRS, the Internal Revenue Code required employers to prepare tax forms, including a Form W-2 Wage and Tax Statement ("Form W-2") and to file them annually with the IRS. The Internal Revenue Code required employers to accurately report to the IRS amounts of employee wages paid, as well as Payroll Taxes due and withheld based on those wages.

68. Section 7501 of the Internal Revenue Code provided that whenever any person is required to withhold or collect any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so withheld or collected shall be held in trust on behalf of the United States.

69. Employers were required to report Payroll Taxes on an Employer's Quarterly Federal Tax Return, Form 941 ("Form 941"). The Form 941 is filed quarterly, and was due one month after the conclusion of each quarter.

IRS Collection Activity

70. On or about June 2, 2010, Defendant FESUM OGBAZION signed and submitted an IRS Proposed Assessment of Trust Fund Recovery Penalty indicating defendant OGBAZION was responsible for the Payroll Taxes due and owing on the behalf of ITS Financial for the tax

periods ending June 30, 2009, September 30, 2009, and December 31, 2009 in the amounts of \$151,085, 184,374, and 189,645 respectively.

71. On or about September 6, 2010, Defendant OGBAZION signed and submitted an IRS Proposed Assessment of Trust Fund Recovery Penalty indicating defendant OGBAZION was responsible for the Payroll Taxes due and owing on the behalf of ITS Financial for the tax periods ending March 31, 2010 and June 30, 2010 in the amounts of \$222,243, and 60,967 respectively.

72. On or about May 20, 2010, Defendant OGBAZION reviewed, directed the completion of, and signed a Form 433-A Collection Information Statement for Wage Earners and Self-Employed Individuals ("Form 433-A"), a form on which the IRS requests information pertaining to assets in order to assess collecting tax liabilities. The Form 433-A required Defendant OGBAZION to list all assets, including investments, stocks, bonds, mutual funds, and interests in partnerships. The "Taxpayer Signature" block of the Form 433-A contains a jurat, reading "Under Penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete."

73. On or about June 15, 2010, the IRS sent Defendant OGBAZION a Final Notice of Intent to Levy, seeking unpaid Payroll Taxes for TaxMate for the quarters ending June 30, 2009 and September 30, 2009.

74. From in or about June 2010 to in or about April 2012, the IRS attempted to levy ITS Financial, TaxMate and Defendant OGBAZION bank accounts.

75. On or about June 25, 2010, the IRS filed a Notice of Federal Tax Lien with the Register of Deeds in Montgomery County, Ohio against TaxMate and Defendant OGBAZION, seeking unpaid Payroll Taxes for the quarter ending December 31, 2009.

76. On or about July 20, 2010, the IRS filed a Notice of Federal Tax Lien with the Register of Deeds in Montgomery County, Ohio against TaxMate and Defendant OGBAZION, seeking unpaid Payroll Taxes for the quarter ending March 31, 2010.

77. On or about October 12, 2011, the IRS Filed a Notice of Federal Tax Lien with the Register of Deed in Montgomery County, Ohio against Defendant OGBAZION, seeking unpaid Payroll Taxes for ITS Financial for the quarters ending July 31, 2009, October 31, 2009, January 31, 2010, April 30, 2010, and July 31, 2010.

78. On or about February 10, 2012, the IRS filed a Notice of Federal Tax Lien with the Register of Deeds in Montgomery County, Ohio against ITS Financial and Defendant OGBAZION, seeking unpaid Payroll Taxes for the quarter ending June 31, 2010.

79. On March 30, 2012, the IRS issued a New Warning of Enforcement letter to Defendant OGBAZION, seeking unpaid Payroll Taxes for ITS Financial for the quarters ending July 31, 2009, October 31, 2009, January 31, 2010, April 30, 2010, and July 31, 2010.

80. Beginning on or about or about July 31, 2009, and continuing thereafter up to and including the present, in the Southern District of Ohio and elsewhere, Defendant OGBAZION did willfully attempt to evade and defeat a large part of the Payroll Taxes due and owing by ITS Financial, TaxMate, and him to the United States of America for the time period beginning in the 2nd Quarter of 2009 and continuing through the 2nd Quarter of 2010 by committing affirmative acts of evasion, including:

- (a) Making false statements to the IRS misrepresenting bank accounts he controlled, his assets, his partnership interests, and the sources of his income;
- (b) Concealing his income and assets by making, and causing to be made, false and misleading statements to an IRS revenue officer during the course of collection activity,

to include on July 30, 2010, providing the IRS with a Form 433-A containing that failed to disclose his then-existing partnership interests in BPD and NPD.

(c) Using nominee entities to collect income and conduct financial transactions related to ITS Financial and TaxMate business;

(d) Knowing full well of the outstanding assessments against him and multiple IRS levies and liens outstanding, on September 22, 2010, Defendant OGBAZION sold his 33.33% interest in BPD to DFG, resulting in his receipt of \$275,234 in gross proceeds, while at the same time failing to pay over to the IRS Payroll Taxes withheld from ITS Financial employee's paychecks;

(e) On September 22, 2010, knowing full well of the outstanding assessments against him and multiple IRS levies and liens outstanding, Defendant OGBAZION sold his 33.33% interest in NWP to DFG, resulting in a capital gain of \$834,798, while at the same time failing to pay over to the IRS Payroll Taxes withheld from ITS Financial employee's paychecks;

(f) From in or about January 2011 to in or about April 2012, Defendant OGBAZION directed approximately \$4.5 million in ITS Financial revenues an Integrated Capital bank account, while at the same time failing to pay over to the IRS Payroll Taxes withheld from ITS Financial employee's paychecks;

(g) From in or about January 2011 to in or about April 2012, Defendant OGBAZION instructed N.B. to use the funds held in the N.B. Integrated Capital account to: pay TCA Financial business expenses; pay ITS Financial business expenses; fund transfers to other accounts where defendant OGBAZION had signature authority, fund a credit card used

by defendant OGBSZION to pay his own personal expenses, including, but not limited to:

- (1) On or about April 14, 2011, Defendant OGBAZION instructed N.B. to pay a \$66,347 ITS Financial expense;
- (2) On or about April 27, 2011, Defendant OGBAZION instructed N.B. to pay a \$50,000 owed on an ITS Financial Certificate of Deposit liability owed to Fifth Third Bank;
- (3) On or about April 27, 2011, Defendant OGBAZION instructed N.B. to transfer \$20,000 to Wright Patterson Credit Union account controlled by defendant OGBAZION; and
- (4) On or about June 20, 2011, Defendant OGBAZION instructed N.B. to transfer \$100,000 to a Bank of America account in the name of TCA Financial and controlled by defendant OGBAZION;
- (h) In or about March 2011, Defendant OGBAZION caused ITS Financial to spend approximately \$160,000 on an ITS Financial corporate retreat, while at the same time failing to pay over to the IRS Payroll Taxes withheld from ITS Financial employee's paychecks; and
- (i) Concealing his assets in the names of nominees.

All in violation of Title 26, United States Code, Section 7201 and Title 18 United States Code, Section 2.

COUNTS SIXTEEN THROUGH TWENTY-THREE

(Failure to Collect and Pay over Payroll Tax)

81. The factual allegations contained in Paragraphs 1 through 26, 29 through 30, 33 through 50, 52 through 53, 56, 59 through 60, and 63 through 79 of this Indictment are realleged and incorporated herein as if copied verbatim.

ITS and TaxMate Payroll Taxes

82. At all times relevant to this indictment, ITS Financial withheld Payroll Taxes from its employees' paychecks.

83. Defendant OGBAZION was the owner of ITS Financial, a person with control over ITS Financial's financial affairs, and was responsible for collecting, accounting for, and paying over Payroll Taxes for ITS Financial.

84. At all times relevant to this indictment, TaxMate withheld Payroll Taxes from its employees' paychecks.

85. Defendant OGBAZION was the sole owner of TaxMate, exercised signature authority over TaxMate business checking accounts, was a person with control over TaxMate's financial affairs, and was responsible for collecting, accounting for, and paying over Payroll Taxes for TaxMate.

86. On or about the dates set forth below, the Defendant, FESUM OGBAZION, did willfully fail to pay over to the IRS all of the Payroll Taxes due and owing to the United States on behalf of ITS Financial and TaxMate and their employees, as set forth below, for each of the following quarters, with each of the calendar quarters constituting a separate count of this Indictment, as set forth below:

| Count | Form 941 Filed on Behalf of Entity | Calendar Year and Quarter | Quarterly Due Date | Date Relevant Form 941 Received | Approximate Unpaid Payroll Taxes Due and Owing |
|--------------|------------------------------------|---------------------------|--------------------|---------------------------------|--|
| SIXTEEN | ITS Financial | 2009 2nd Quarter | July 31, 2009 | September 14, 2009 | \$220,068 |
| SEVENTEEN | ITS Financial | 2009 3rd Quarter | October 31, 2009 | December 21, 2009 | \$260,400 |
| EIGHTEEN | ITS Financial | 2009 4th Quarter | January 31, 2010 | March 29, 2010 | \$260,896 |
| NINETEEN | ITS Financial | 2010 1st Quarter | April 30, 2010 | August 9, 2010 | \$224,501 |
| TWENTY | TaxMate | 2009 2nd Quarter | July 31, 2009 | September 28, 2009 | \$33,674 |
| TWENTY-ONE | TaxMate | 2009 3rd Quarter | October 31, 2009 | December 28, 2009 | \$80,148 |
| TWENTY-TWO | TaxMate | 2009 4th Quarter | January 31, 2010 | June 28, 2010 | \$103,671 |
| TWENTY-THREE | TaxMate | 2010 1st Quarter | April 30, 2010 | August 9, 2010 | \$78,463 |

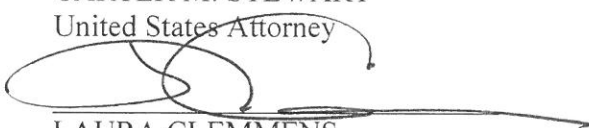
All in violation of Title 26, United States Code, Section 7202 and Title 18, United States Code, Section 2.

Date: 8-25-2015

A True Bill.

1/5/ Signed
Grand Jury Foreperson

CARTER M. STEWART
United States Attorney



LAURA CLEMMENS
Dayton Branch Chief