

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN JOSE

## Filed

SEP 26 2012

SEALED BY ORDER  
OF THE COURT

UNITED STATES OF AMERICA,

v.

# CR12 0070 DLJ

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

BRENDA JO KIBBEE

### HRL

DEFENDANT(S).

## INDICTMENT

26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

A true bill.



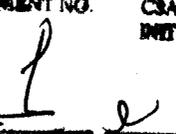
Foreman

Filed in open court this 26<sup>th</sup> day of September, 2012



Clerk

Bail, \$ no bail arrest warrant

DOCUMENT NO.	CLERK
	INITIALS
DISTRICT COURT CRIMINAL CASE RECORD	

C-File-  
GWS

1 MELINDA L. HAAG (CABN 132612)  
2 United States Attorney

3 **Filed**

4 SEP 26 2012

5 **SEALED BY ORDER  
6 OF THE COURT**

7 RICHARD W. WIEKING  
8 CLERK, U.S. DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN JOSE DIVISION

14 **CR12 00701**

15 UNITED STATES OF AMERICA,

16 No. CR-

17 **DLJ**

18 Plaintiff,

19 VIOLATIONS:

20 v.

21 26 U.S.C. § 5661(a) – Failure to Pay Tax on  
22 Wine

23 BRENDA JO KIBBEE,

24 **HRL**

25 Defendant.

26 SAN JOSE VENUE

27 INDICTMENT

28 The Grand Jury charges:

COUNT ONE: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

During the period August 1, 2008, through August 15, 2008, in the Northern District of California, the defendant,

BRENDA JO KIBBEE,

then a resident of Monterey County, California, owned and operated Monterey Wine Services, a bonded wine cellar, from which wine was removed for sale or consumption resulting in an excise tax due and owing to the United States of America in an amount of approximately \$30,359.08. BRENDA JO KIBBEE was required by law to pay, on or before August 29, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade

1 Bureau of the United States Department of the Treasury. Well knowing all of the  
2 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
3 before August 29, 2008, to pay the excise tax due.

4 All in violation of Title 26, United States Code, Section 5661(a).

5 COUNT TWO: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

6 During the period August 16, 2008, through August 31, 2008, in the Northern  
7 District of California, the defendant,

8 BRENDA JO KIBBEE,

9 then a resident of Monterey County, California, owned and operated Monterey Wine  
10 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
11 resulting in an excise tax due and owing to the United States of America in an amount of  
12 approximately \$46,548.54. BRENDA JO KIBBEE was required by law to pay, on or  
13 before September 12, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
14 Bureau of the United States Department of the Treasury. Well knowing all of the  
15 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
16 before September 12, 2008, to pay the excise tax due.

17 All in violation of Title 26, United States Code, Section 5661(a).

18 COUNT THREE: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

19 During the period September 1, 2008, through September 15, 2008, in the  
20 Northern District of California, the defendant,

21 BRENDA JO KIBBEE,

22 then a resident of Monterey County, California, owned and operated Monterey Wine  
23 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
24 resulting in an excise tax due and owing to the United States of America in an amount of  
25 approximately \$39,766.45. BRENDA JO KIBBEE was required by law to pay, on or  
26 before September 29, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
27 Bureau of the United States Department of the Treasury. Well knowing all of the  
28 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or

1 before September 29, 2008, to pay the excise tax due.

2 All in violation of Title 26, United States Code, Section 5661(a).

3 COUNT FOUR: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

4 During the period September 16, 2008, through September 25, 2008, in the  
5 Northern District of California, the defendant,

6 BRENDA JO KIBBEE,

7 then a resident of Monterey County, California, owned and operated Monterey Wine  
8 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
9 resulting in an excise tax due and owing to the United States of America in an amount of  
10 approximately \$38,661.41. BRENDA JO KIBBEE was required by law to pay, on or  
11 before September 29, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
12 Bureau of the United States Department of the Treasury. Well knowing all of the  
13 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
14 before September 29, 2008, to pay the excise tax due.

15 All in violation of Title 26, United States Code, Section 5661(a).

16 COUNT FIVE: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

17 During the period September 26, 2008, through September 30, 2008, in the  
18 Northern District of California, the defendant,

19 BRENDA JO KIBBEE,

20 then a resident of Monterey County, California, owned and operated Monterey Wine  
21 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
22 resulting in an excise tax due and owing to the United States of America in an amount of  
23 approximately \$19,195.16. BRENDA JO KIBBEE was required by law to pay, on or  
24 before October 14, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
25 Bureau of the United States Department of the Treasury. Well knowing all of the  
26 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
27 before October 14, 2008, to pay the excise tax due.

28 All in violation of Title 26, United States Code, Section 5661(a).

1 COUNT SIX: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

2 During the period October 1, 2008, through October 15, 2008, in the Northern  
3 District of California, the defendant,

4 BRENDA JO KIBBEE,

5 then a resident of Monterey County, California, owned and operated Monterey Wine  
6 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
7 resulting in an excise tax due and owing to the United States of America in an amount of  
8 approximately \$57,624.79. BRENDA JO KIBBEE was required by law to pay, on or  
9 before October 29, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
10 Bureau of the United States Department of the Treasury. Well knowing all of the  
11 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
12 before October 29, 2008, to pay the excise tax due.

13 All in violation of Title 26, United States Code, Section 5661(a).

14 COUNT SEVEN: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

15 During the period October 16, 2008, through October 31, 2008, in the Northern  
16 District of California, the defendant,

17 BRENDA JO KIBBEE,

18 then a resident of Monterey County, California, owned and operated Monterey Wine  
19 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
20 resulting in an excise tax due and owing to the United States of America in an amount of  
21 approximately \$82,809.61. BRENDA JO KIBBEE was required by law to pay, on or  
22 before November 14, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
23 Bureau of the United States Department of the Treasury. Well knowing all of the  
24 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
25 before November 14, 2008, to pay the excise tax due.

26 All in violation of Title 26, United States Code, Section 5661(a).

27 COUNT EIGHT: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

28 During the period November 1, 2008, through November 15, 2008, in the Northern

1 District of California, the defendant,

2 BRENDA JO KIBBEE,

3 then a resident of Monterey County, California, owned and operated Monterey Wine  
4 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
5 resulting in an excise tax due and owing to the United States of America in an amount of  
6 approximately \$41,276.44. BRENDA JO KIBBEE was required by law to pay, on or  
7 before November 28, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
8 Bureau of the United States Department of the Treasury. Well knowing all of the  
9 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
10 before November 28, 2008, to pay the excise tax due.

11 All in violation of Title 26, United States Code, Section 5661(a).

12 COUNT NINE: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

13 During the period November 16, 2008, through November 30, 2008, in the  
14 Northern District of California, the defendant,

15 BRENDA JO KIBBEE,

16 then a resident of Monterey County, California, owned and operated Monterey Wine  
17 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
18 resulting in an excise tax due and owing to the United States of America in an amount of  
19 approximately \$51,843.97. BRENDA JO KIBBEE was required by law to pay, on or  
20 before December 12, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
21 Bureau of the United States Department of the Treasury. Well knowing all of the  
22 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
23 before December 12, 2008, to pay the excise tax due.

24 All in violation of Title 26, United States Code, Section 5661(a).

25 COUNT TEN: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

26 During the period December 1, 2008, through December 15, 2008, in the Northern  
27 District of California, the defendant,

28 BRENDA JO KIBBEE,

1 then a resident of Monterey County, California, owned and operated Monterey Wine  
2 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
3 resulting in an excise tax due and owing to the United States of America in an amount of  
4 approximately \$84,593.89. BRENDA JO KIBBEE was required by law to pay, on or  
5 before December 29, 2008, that excise tax to the Alcohol and Tobacco Tax and Trade  
6 Bureau of the United States Department of the Treasury. Well knowing all of the  
7 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
8 before December 29, 2008, to pay the excise tax due.

9 All in violation of Title 26, United States Code, Section 5661(a).

10 COUNT ELEVEN: 26 U.S.C. § 5661(a) - Failure to Pay Tax on Wine

11 During the period December 16, 2008, through December 31, 2008, in the  
12 Northern District of California, the defendant,

13 BRENDA JO KIBBEE,

14 then a resident of Monterey County, California, owned and operated Monterey Wine  
15 Services, a bonded wine cellar, from which wine was removed for sale or consumption  
16 resulting in an excise tax due and owing to the United States of America in an amount of  
17 approximately \$88,497.74. BRENDA JO KIBBEE was required by law to pay, on or  
18 before January 14, 2009, that excise tax to the Alcohol and Tobacco Tax and Trade  
19 Bureau of the United States Department of the Treasury. Well knowing all of the

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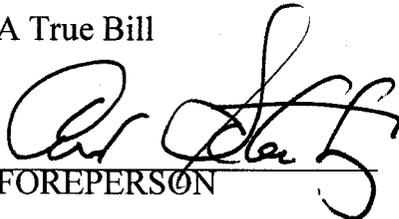
28 //

1 foregoing, BRENDA JO KIBBEE, with intent to defraud the United States, failed on or  
2 before January 14, 2009, to pay the excise tax due.

3 All in violation of Title 26, United States Code, Section 5661(a).

4 A True Bill

5  
6 Dated: 9/26/2012

  
FOREPERSON

7  
8 MELINDA HAAG  
United States Attorney

9  
10   
11 MIRANDA KANE  
12 Assistant United States Attorney  
13 Chief, Criminal Division

14 Approved as to Form

15   
16 MATTHEW J. KLUGE  
17 Trial Attorney  
18 Tax Division

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. § 5661(a) - Failure to Pay Tax on Wine

Petty  Minor  Misdemeanor  Felony

SEALED BY ORDER OF THE COURT

PENALTY:

26 U.S.C. § 5661(a) - 5 years prison, \$250,000 fine or 2x the gross gain or loss, 3 years supervised release, \$100 assessment

CR 12 00701 DLJ

Name of District Court, and/or Judge/Magistrate Location  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DEFENDANT - U.S.

BRENDA JO KIBBEE

DISTRICT COURT NUMBER

DEFENDANT

IS NOT IN CUSTODY

- 1)  Has not been arrested, pending outcome of 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)

HRL

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 & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

PROCEEDING Name of Complainant Agency, or Person (& 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 re prosecution 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 THIS FORM MELINDA HAAG

U.S. Att'y  Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) MATTHEW KLUGE, Trial Attorney, Tax Division

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: \_\_\_\_\_

Filed

United States District Court  
Northern District of California

SEP 26 2012

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

CRIMINAL COVER SHEET

**Instructions:** Effective January 3, 2012, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case. Please place this form on top of the Defendant Information Form.

SEALED BY CLERK  
OF THE COURT

CR12 00701

Case Name:

Case Number:

USA v. BRENDA JO KIBBEE

DLJ

Total Number of Defendants:

1  2-7 \_\_\_\_\_ 8 or more \_\_\_\_\_

Is This Case Under Seal?

Yes  No  **HRL**

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes \_\_\_\_\_ No

Venue (Per Crim. L.R. 18-1):

SF \_\_\_\_\_ OAK \_\_\_\_\_ SJ

Is this a death-penalty-eligible RICO Act gang case?

Yes \_\_\_\_\_ No

Assigned AUSA (Lead Attorney):

MATTHEW KLUGE, Trial Attorney

Comments:

Date Submitted:

9/26/12

[Empty rectangular box for comments]

PRINT