

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- : INDICTMENT

TREVOR WHITTINGHAM, :

Defendant. :

12^{13 Cr} CRIM 971

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COUNTS ONE THROUGH THIRTEEN
(Failure to Pay Over Payroll Taxes)

The Grand Jury charges:

Background

1. At all times relevant to this Indictment, TREVOR WHITTINGHAM, the defendant, resided in the State of New Jersey.
2. At all times relevant to this Indictment, TREVOR WHITTINGHAM, the defendant, owned and controlled two companies, EZ Going Park Here and We Have Cars II, through which he operated parking lots in Harlem and other parts of upper Manhattan, New York.
3. Pursuant to the Internal Revenue Code and associated statutes and regulations, including the Federal Insurance Contributions Act ("FICA"), employers are required to withhold certain amounts from the paychecks of their employees and then remit these amounts over to the Internal Revenue Service ("IRS") on a quarterly basis, no later than

the last day of the month following the end of the quarter. In addition to the amounts that employers must withhold from the paychecks of their employees for income taxes and FICA, employers are also required to make contributions under FICA in an amount equal to the amounts withheld from their employees (collectively, "payroll taxes"). Payroll taxes are made up, therefore, of five components: withheld income taxes, as well as the employer's and employee's equal shares of 6.2% for Social Security and 1.45% for Medicare taxes, totaling 15.3% of an employee's total wages.

4. A person is responsible for collecting, accounting for, and paying over payroll taxes to the IRS if he or she has the authority required to exercise significant control over the employer's financial affairs, regardless of whether the individual exercised such control in fact. More than one person can be considered a "responsible person" for the purpose of collecting, accounting for, and paying payroll taxes on behalf of an employer.

5. At all times relevant to this Indictment, TREVOR WHITTINGHAM, the defendant, was the person at EZ Going Park Here and We Have Cars II responsible for signing and causing to be signed, and filing and causing to be filed, Employer's Quarterly Federal Tax Returns, Form 941, with the IRS, and depositing and paying over the federal and state payroll taxes for those entities.

The Payroll Tax Scheme

6. From 2005 through 2009, EZ Going Park Here and We Have Cars II accumulated approximately \$251,265 in unpaid payroll tax liabilities.

7. For the quarters ending December 31, 2006 through June 30, 2009, TREVOR WHITTINGHAM, the defendant, caused EZ Going Park Here and We Have Cars II to deduct and collect from the total taxable wages of its employees federal income taxes and Federal Insurance Contributions Act taxes due and owing to the United States of America for the respective quarters. The majority of those payroll taxes were not paid over to the IRS as required. Instead, WHITTINGHAM used the corporate funds of EZ Going Park Here and We Have Cars II to pay for various personal items and otherwise finance a lavish lifestyle.

Statutory Allegations

8. From in or about December 2006 through in or about June 2009, in the Southern District of New York and elsewhere, TREVOR WHITTINGHAM, the defendant, being the owner of EZ Going Park Here and We Have Cars II, and a responsible person with respect to its payroll taxes, and thereby being required to collect, account for, and pay over to the IRS payroll taxes of the employees, among others, willfully and knowingly failed to pay over said payroll taxes to the Internal Revenue Service, for the quarters and in the approximate amounts set forth below:

Count	Quarter Ending	Unpaid Income and FICA Taxes (Employees' Share)
1	12/31/06	\$4,335
2	3/31/07	\$5,547
3	6/30/07	\$5,247
4	9/30/07	\$5,507
5	12/31/07	\$5,774

Count	Quarter Ending	Unpaid Income and FICA Taxes (Employees' Share)
6	3/31/08	\$5,636
7	6/30/08	\$6,832
8	9/30/08	\$7,342
9	12/31/08	\$7,062
10	3/31/09	\$6,453
11	6/30/09	\$5,558
12	9/30/09	\$6,897
13	12/30/09	\$7,184
	Total	\$79,374

(Title 26, United States Code, Section 7202.)

Preet Bharara

 PREET BHARARA
 United States Attorney