

★ JUL 09 2018 ★

BROOKLYN OFFICE

SSS:NJM
F. #2017R00179

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

RAFAL ZIOLKOWSKI,

Defendant.

----- X

THE GRAND JURY CHARGES:

INDICTMENT

Cr. No. **CR 18 00347**
(T. 18, U.S.C., §§ 371, 1001(a)(2), 2 and 3551
et seq.; T. 26, U.S.C., § 7202)

BLOCK, J.

TISCIONE, M.J.

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

1. Oliwa Construction Inc. ("Oliwa") was a construction company doing business in Queens, New York. The defendant RAFAL ZIOLKOWSKI was the owner, president and chief executive officer of Oliwa.
2. Pursuant to Title 26 of the United States Code, employers, including Oliwa, had a duty to collect, truthfully account for and pay over to the Internal Revenue Service ("IRS") Federal Insurance Contributions Act ("FICA") taxes, and to file Employer's Quarterly Federal Tax Returns, Internal Revenue Service Form 941 ("Form 941"). Under FICA, Oliwa was required to collect, truthfully account for and pay over to the IRS taxes on behalf of its employees to fund various federal benefits programs, including Social Security and Medicare. The defendant RAFAL ZIOLKOWSKI was responsible for filing tax returns on behalf of Oliwa.

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3. In or about and between January 2010 and December 2013, the defendant RAFAL ZIOLKOWSKI, together with others, caused Oliwa to file Forms 941 in which ZIOLKOWSKI knowingly and falsely understated the gross wages paid to Oliwa employees to avoid paying the full amount of FICA taxes that Oliwa owed.

4. As a result of the defendant RAFAL ZIOLKOWSKI's actions, Oliwa failed to pay a total of approximately \$650,000.00 in FICA taxes.

COUNT ONE
(Conspiracy to Defraud the United States)

5. The allegations contained in paragraphs one through four are realleged and incorporated as if fully set forth in this paragraph.

6. In or about and between January 2009 and December 2013, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RAFAL ZIOLKOWSKI, together with others, did knowingly and willfully conspire to defraud the United States by impeding, impairing, obstructing and defeating the lawful governmental functions of the IRS, in the ascertainment, computation, assessment and collection of revenue, specifically, FICA taxes.

MANNER AND MEANS

7. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

- a. paying, and causing the payment of, cash payments to Oliwa workers;
- b. cashing, and causing to be cashed, checks made payable to Oliwa for work performed by the company; and

c. transmitting, and causing the transmission of, false information regarding Oliwa employee wages to Oliwa's bookkeeper and accountant, resulting in the preparation of false and fraudulent IRS Forms 941 and W-2s that were submitted to the IRS.

8. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendant RAFAL ZIOLKOWSKI, together with others, committed and caused the commission of, among others, the following:

OVERT ACTS

a. On or about January 5, 2009, ZIOLKOWSKI established an account for Oliwa at Coney Island Payroll Services Inc., a commercial check-cashing establishment, and provided that ZIOLKOWSKI and a co-conspirator ("Co-conspirator 1"), an individual whose identity is known to the Grand Jury, had the authority to cash checks on behalf of Oliwa.

b. On or about April 23, 2010, ZIOLKOWSKI signed Oliwa's Form 941 for the first quarter of 2010, which form did not reflect money paid as wages to Oliwa's employees in cash.

c. In or about April 2010, ZIOLKOWSKI endorsed a check made out to Oliwa.

d. On or about July 21, 2010, ZIOLKOWSKI signed Oliwa's Form 941 for the second quarter of 2010, which form did not reflect money paid as wages to Oliwa's employees in cash.

e. On or about October 20, 2010, ZIOLKOWSKI signed Oliwa's Form 941 for the third quarter of 2010, which form did not reflect money paid as wages to Oliwa's employees in cash.

f. On or about January 15, 2011, ZIOLKOWSKI signed Oliwa's Form 941 for the fourth quarter of 2010, which form did not reflect money paid as wages to Oliwa's employees in cash.

g. On or about April 18, 2011, ZIOLKOWSKI signed Oliwa's Form 941 for the first quarter of 2011, which form did not reflect money paid as wages to Oliwa's employees in cash.

h. On or about July 27, 2011, ZIOLKOWSKI signed Oliwa's Form 941 for the second quarter of 2011, which form did not reflect money paid as wages to Oliwa's employees in cash.

i. On or about October 17, 2011, ZIOLKOWSKI signed Oliwa's Form 941 for the third quarter of 2011, which form did not reflect money paid as wages to Oliwa's employees in cash.

j. On or about January 26, 2012, ZIOLKOWSKI signed Oliwa's Form 941 for the fourth quarter of 2011, which form did not reflect money paid as wages to Oliwa's employees in cash.

k. On or about April 28, 2012, ZIOLKOWSKI signed Oliwa's Form 941 for the first quarter of 2012, which form did not reflect money paid as wages to Oliwa's employees in cash.

l. On or about July 26, 2012, ZIOLKOWSKI signed Oliwa's Form 941 for the second quarter of 2012, which form did not reflect money paid as wages to Oliwa's employees in cash.

m. On or about October 17, 2012, ZIOLKOWSKI signed Oliwa's Form 941 for the third quarter of 2012, which form did not reflect money paid as wages to Oliwa's employees in cash.

n. On or about January 29, 2013, ZIOLKOWSKI signed Oliwa's Form 941 for the fourth quarter of 2012, which form did not reflect money paid as wages to Oliwa's employees in cash.

o. On or about April 18, 2013, ZIOLKOWSKI signed Oliwa's Form 941 for the first quarter of 2013, which form did not reflect money paid as wages to Oliwa's employees in cash.

p. On or about July 15, 2013, ZIOLKOWSKI signed Oliwa's Form 941 for the second quarter of 2013, which form did not reflect money paid as wages to Oliwa's employees in cash.

q. On or about October 29, 2013, Co-conspirator 1 endorsed a check made out to Oliwa.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNTS TWO THROUGH EIGHT
(Willful Failure to Collect and Pay Over Taxes)

9. The allegations contained in paragraphs one through four are realleged and incorporated as if fully set forth in this paragraph.

10. On or about the dates set forth below, within the Eastern District of New York and elsewhere, the defendant RAFAL ZIOLKOWSKI, together with others, did knowingly and willfully fail to collect, truthfully account for and pay over to the IRS FICA

taxes on behalf of Oliwa, knowing that such FICA taxes were due and owing, as set forth below:

COUNT	DATE	APPROXIMATE AMOUNT	TAX PERIOD
TWO	June 30, 2012	\$16,144.00	Second Quarter 2012
THREE	September 30, 2012	\$16,144.00	Third Quarter 2012
FOUR	December 31, 2012	\$16,144.00	Fourth Quarter 2012
FIVE	March 31, 2013	\$101,766.50	First Quarter 2013
SIX	June 30, 2013	\$101,766.50	Second Quarter 2013
SEVEN	September 30, 2013	\$101,766.50	Third Quarter 2013
EIGHT	December 31, 2013	\$101,766.50	Fourth Quarter 2013

(Title 26, United States Code, Section 7202; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT NINE
(False Statements)

11. The allegations contained in paragraphs one through four are realleged and incorporated as if fully set forth in this paragraph.


12. On or about November 5, 2014, within the Eastern District of New York, the defendant RAFAL ZIOLKOWSKI did knowingly and willfully make a materially false, fictitious and fraudulent statement and representation, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the IRS, in that the defendant falsely stated and represented to IRS Special Agents that he had never been to a commercial check-cashing business when in fact, as he then and there well knew

and believed, he had been to two commercial check-cashing businesses to open accounts for Oliwa and to provide Co-conspirator 1 with signatory rights.

(Title 18, United States Code, Sections 1001(a)(2) and 3551 et seq.)

A TRUE BILL


FOREPERSON


RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No. _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

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INDICTMENT

(T. 18, U.S.C., §§ 371, 1001(a)(2), 2 and 3551 et seq.; T. 26, U.S.C.,
§ 7202.)

A true bill.

Foreperson

Filed in open court this _____ *day,*

of _____ *A.D. 20* _____

Clerk

Bail, \$ _____

Nicholas J. Moscow, Assistant U.S. Attorney (718) 254-6212