

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED
2015 JUL -9 P 1:50
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

CR 15 359

BRIAN PETER STALLINGS

TEH

DEFENDANT(S).

INDICTMENT

26 U.S.C. § 7206(1) – Making and Subscribing False Tax Returns

26 U.S.C. § 7202 –Willful Failure to Account for and Pay Over Taxes

A true bill.

Foreman

Filed in open court this 9th day of

2015

Clerk

Rose Maher
ROSE MAHER

~~NO BAIL ARREST WARRANT~~

ISSUE SUMMONS

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED

26 U.S.C. § 7206(1) – Making and Subscribing False Tax Returns ☐ Petty

26 U.S.C. § 7202 – Willful Failure to Account for and Pay Over Taxes ☐ Minor

☐ Misdemeanor

☒ Felony

PENALTY: 26 U.S.C. § 7206(1) – 3 years prison, \$250,000 fine, 1 year supervised release, \$100 assessment; 26 U.S.C. § 7202 – 5 years prison, \$250,000 fine, 3 years supervised release, \$100 assessment

Name of District Court, and of Judge/Magistrate, Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEFENDANT - U.S.

BRIAN PETER STALLINGS

DISTRICT COURT NUMBER

CR 15 359

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 reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form MELINDA HAAG

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

Jose Olivera, AUSA, Tax Div.

DEFENDANT**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

 1) ☒ 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)
IS IN CUSTODY
 4) ☐ On this charge

 5) ☐ On another conviction

☐ Federal ☐ State

 6) ☐ Awaiting trial on other charges

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

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
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:

MELINDA HAAG (CABN 132612)
United States Attorney

FILED
2015 JUL -9 P 1:50
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN PETER STALLINGS,

Defendant.

CASE NO. CR:

CR 15 359
VIOLATIONS: 26 U.S.C. § 7206(1) –
Making and Subscribing False Tax
Returns; 26 U.S.C. § 7202 – Willful Failure
to Account for and Pay Over Taxes

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

Introductory Allegations

At all times relevant to this indictment, unless otherwise indicated, and with all dates being approximate and all date ranges both approximate and inclusive:

1. Defendant BRIAN PETER STALLINGS (“STALLINGS”) was a resident of Hillsborough, located in San Mateo County, California.

2. From, at least, 2008 through 2011, STALLINGS was the president and sole shareholder of Stallings Painting, Inc. (“SPI”), an S-Corporation engaged in residential and commercial painting in the Northern District of California.

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Indictment

3. From 2008 through 2011, STALLINGS exercised control over SPI. STALLINGS, among other things, made payroll decisions for SPI, set wages for SPI's employees, was the sole signatory on SPI's bank accounts, and signed and/or authorized the submission of SPI's tax returns, including Forms 1120S, U.S. Tax Return for S-Corporation.

4. From 2008 through 2011, SPI maintained at least two business bank accounts: (1) a business checking account with Comerica Bank ending in x1135; and (2) a business checking account with First Bank ending in x1446. STALLINGS was the sole signatory on both bank accounts during this period.

5. During calendar years 2008 through 2010, gross receipts received by SPI were deposited into both business bank accounts. For these years, STALLINGS provided the accountants preparing SPI's Forms 1120S and his own Forms 1040, U.S. Individual Income Tax Return, with only monthly bank statements from SPI's Comerica business bank account x1135.

6. From 2009 through 2011, SPI used a third-party company to perform and process payroll for SPI. SPI's employees were paid by payroll check from SPI's Comerica bank account. Some SPI employees were paid additional wages in cash from SPI's bank account with First Bank. STALLINGS was required to collect, account for, and pay over income and Federal Insurance Contribution Act ("FICA") taxes from the wages paid to SPI's employees.

7. The Internal Revenue Service is an agency of the United States Department of the Treasury and is responsible for administering and enforcing the tax laws of the United States.

COUNT ONE: (26 U.S.C. § 7206(1) - Making and Subscribing False Tax Returns)

8. Paragraphs 1 through 7 are incorporated and realleged as if fully set forth here.

9. On October 15, 2009, in the Northern District of California, and elsewhere, the defendant,

BRIAN PETER STALLINGS,

did willfully make and subscribe a Form 1040, U.S. Individual Income Tax Return, for the calendar year 2008, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter. That income tax return, filed with the Internal Revenue Service, reported income from SPI in the amount of \$70,656; however, the

1 defendant received additional income from SPI that he knowingly and willfully failed to include in his
2 tax return.

3 All in violation of Title 26, United States Code, Section 7206(1).

4 COUNT TWO: (26 U.S.C. § 7206(1) - Making and Subscribing False Tax Returns)

5 10. Paragraphs 1 through 7 are incorporated realleged as if fully set forth here.

6 11. On October 15, 2010, in the Northern District of California, and elsewhere, the
7 defendant,

8 BRIAN PETER STALLINGS,

9 did willfully make and subscribe a Form 1040, U.S. Individual Income Tax Return, for the calendar year
10 2009, which was verified by a written declaration that it was made under the penalties of perjury and
11 which he did not believe to be true and correct as to every material matter. That income tax return, filed
12 with the Internal Revenue Service, reported income from SPI in the amount of \$62,043; however, the
13 defendant received additional income from SPI that he knowingly and willfully failed to include in his
14 tax return.

15 All in violation of Title 26, United States Code, Section 7206(1).

16 COUNT THREE: (26 U.S.C. § 7206(1) - Making and Subscribing False Tax Returns)

17 12. Paragraphs 1 through 7 are incorporated realleged as if fully set forth here.

18 13. On October 15, 2011, in the Northern District of California, and elsewhere, the
19 defendant,

20 BRIAN PETER STALLINGS,

21 did willfully make and subscribe a Form 1040, U.S. Individual Income Tax Return, for the calendar year
22 2010, which was verified by a written declaration that it was made under the penalties of perjury and
23 which he did not believe to be true and correct as to every material matter. That income tax return, filed
24 with the Internal Revenue Service, reported income from SPI in the amount of \$28,617; however, the
25 defendant received additional income from SPI that he knowingly and willfully failed to include in his
26 tax return.

27 All in violation of Title 26, United States Code, Section 7206(1).

28 //

COUNTS FOUR THROUGH FOURTEEN: (26 U.S.C. § 7202 - Willful Failure to Account for and Pay Over Taxes)

14. Paragraphs 1 through 7 are incorporated and realleged as if fully set forth here.

15. For the periods identified below, in the Northern District of California, and elsewhere, the defendant,

BRIAN PETER STALLINGS,

as the sole shareholder and president of SPI, was a responsible person for SPI and was required by the tax laws of the United States to collect, account for, and pay over to the Internal Revenue Service federal income taxes and FICA taxes from the total taxable wages of employees of SPI. STALLINGS willfully failed truthfully to collect, account for, and pay over to the Internal Revenue Service federal income taxes and FICA taxes due and owing to the United States on behalf of SPI and its employees, for each of the following periods, with each calendar period consisting of a separate count of this indictment.

Count	Period	Form	Date Submitted To IRS	Unpaid Balance of Trust Fund Taxes
4	2 nd Qtr. 2009	941	July 31, 2009	\$15,219
5	3 rd Qtr. 2009	941	October 31, 2009	\$12,843
6	4 th Qtr. 2009	941	February 3, 2010	\$20,512
7	1 st Qtr. 2010	941	May 10, 2010	\$6,083
8	2 nd Qtr. 2010	941	August 5, 2010	\$13,053
9	3 rd Qtr. 2010	941	November 3, 2010	\$25,900
10	4 th Qtr. 2010	941	January 31, 2011	\$20,345
11	1 st Qtr. 2011	941	May 10, 2011	\$4,474
12	2 nd Qtr. 2011	941	July 31, 2011	\$14,474
13	3 rd Qtr. 2011	941	October 31, 2011	\$29,500
14	4 th Qtr. 2011	941	January 31, 2012	\$37,924
				\$200,327

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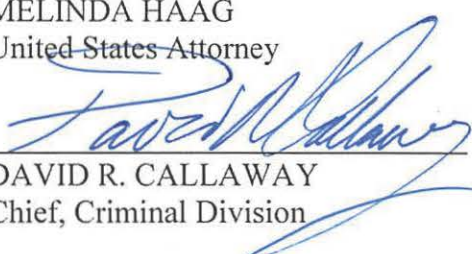
Indictment

Each in violation of Title 26, United States Code, Section 7202.

DATED: 7/9/15

FOREPERSON

MELINDA HAAG
United States Attorney


DAVID R. CALLAWAY
Chief, Criminal Division

Approved as to Form


JOSE A. OLIVERA
Assistant United States Attorney
Tax Division

**United States District Court
Northern District of California**

CRIMINAL COVER SHEET

FILED
2015 JUL -9 P 1:51
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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.

Case Name:

USA v. BRIAN PETER STALLINGS

CR 15 Case Number: 359

TEH

Total Number of Defendants:

1 ☒ 2-7 ☐ 8 or more ☐

Is This Case Under Seal?

Yes ☒ No ☐

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 ☐ EUR ☐ MON ☐

Is any defendant charged with a death-penalty-eligible crime?

Yes ☐ No ☒

Assigned AUSA (Lead Attorney):

JOSE A. OLIVERA, AUSA

Is this a RICO Act gang case?

Yes ☐ No ☒

Date Submitted:

7/9/2015

Comments:

Save

Print

Clear Form