

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : INFORMATION  
  
- v - : 19 Cr. \_\_\_\_  
  
FRANCIS J. O'REILLY, :  
  
Defendant. :  
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COUNT ONE  
(Failure to Pay Over Payroll Taxes)

The United States Attorney charges:

INTRODUCTION

1. In or about 1989, FRANCIS J. O'REILLY, the defendant, was admitted to practice law in New York State.
2. At all times relevant to this Information, FRANCIS J. O'REILLY, the defendant, was a citizen of the United States and a self-employed attorney who maintained a law practice in Putnam County, New York (the "O'Reilly Law Practice" or the "Law Practice"). The O'Reilly Law Practice specialized in, among other things, bankruptcy, foreclosure defense, and criminal defense.
3. At all times relevant to this Information, FRANCIS J. O'REILLY, the defendant, operated the O'Reilly Law Practice as a sole proprietorship. In the calendar year 2015, O'REILLY had between approximately three and eight paid employees.

4. At all times relevant to this Information, FRANCIS J. O'REILLY, the defendant, exercised control over the O'Reilly Law Practice's financial affairs and was a responsible person under federal law for collecting, truthfully accounting for, and paying over payroll taxes to the Internal Revenue Service ("IRS").

5. At all times relevant to this Information, FRANCIS J. O'REILLY, the defendant, was required by federal law to withhold from the wages of the Law Practice's employees: i) federal income tax; and ii) the employee's contribution to Social Security and Medicare, unless that employee was exempt from part or all of such withholding. O'REILLY was required by federal law to pay over the withheld funds, together with the Law Practice's own contributions to Social Security and Medicare for each employee (all together, "payroll taxes"), to the IRS. In addition, O'REILLY was required to report the withheld payroll taxes to the IRS by filing a Form 941, Employer's Quarterly Federal Tax Return, no later than the last day of the month following the end of each quarter.

6. During the calendar year 2015, FRANCIS J. O'REILLY, the defendant, withheld payroll taxes from the salaries of some employees of the O'Reilly Law Practice and filed quarterly Forms 941 reporting substantial amounts of

payroll taxes due and owing to the IRS. However, O'REILLY failed to pay over the payroll taxes for employees of the O'Reilly Law Practice to the IRS as required by law. Instead, O'REILLY spent the withheld payroll taxes, which O'REILLY was required to hold in trust for the United States Government, on personal and business expenses.

**STATUTORY ALLEGATION**

7. From on or about January 1, 2015, through on or about January 31, 2016, in the Southern District of New York and elsewhere, FRANCIS J. O'REILLY, the defendant, being a responsible person with respect to payroll taxes, and thereby being required to collect, account for, and pay over to the IRS payroll taxes of the employees of the O'Reilly Law Practice, knowingly and willfully failed to collect, truthfully account for, and pay over payroll taxes for the O'Reilly Law Practice to the IRS as described below:

<u>QUARTER ENDING</u>	<u>APPROXIMATE AMOUNT OF UNPAID FEDERAL PAYROLL TAX</u>
March 31, 2015	\$6,622
June 30, 2015	\$6,240
September 30, 2015	\$6,967
December 31, 2015	\$7,994

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

COUNT TWO  
(Tax Evasion)

The United States Attorney further charges:

8. The allegations set forth in paragraphs 1 through 6 are repeated, realleged, and incorporated by reference as though fully set forth herein.

9. Pursuant to the Internal Revenue Code and attendant regulations, individual U.S. citizens and residents are generally required to report accurately their income, tax obligations, and, where appropriate, any claim for a refund annually on a United States Individual Income Tax Return, Form 1040 ("Form 1040"), which must be filed with the IRS.

10. At all times relevant to this Information, the New York State rules governing the professional conduct of attorneys required that they: (a) maintain the funds of clients and third parties in a special bank account known as an attorney special account, attorney trust account, or attorney escrow account; (b) maintain records of, among other things, the source of all funds deposited into such accounts; and (c) not commingle the funds of clients and third parties with funds of their own.

11. At all times relevant to this Information, FRANCIS J. O'REILLY, the defendant, maintained an attorney trust account at KeyBank (the "Attorney Trust Account").

12. During the calendar year 2015, FRANCIS J. O'REILLY, the defendant, withdrew approximately \$119,427 from the Attorney Trust Account for O'REILLY's personal use, including by issuing checks to himself totaling approximately \$116,004.

13. In or about April 2016, FRANCIS J. O'REILLY, the defendant, prepared and filed a United States Individual Income Tax Return, Form 1040, for the calendar year 2015 (the "2015 Form 1040") declaring approximately \$58,223 in business income and a corresponding tax liability in the approximate amount of \$14,403 (the "2015 Declared Tax Liability"). However, O'REILLY's 2015 Form 1040 was false and fraudulent in that it omitted the substantial income that O'REILLY had realized from his Attorney Trust Account. Accordingly, the 2015 Declared Tax Liability was substantially lower than O'REILLY's true tax liability for the calendar year 2015. In addition, O'REILLY failed to pay any taxes for the calendar year 2015, including the 2015 Declared Tax Liability, to the IRS.

14. In or about late 2016, in an effort to settle his outstanding tax liabilities, including his personal tax liabilities for the calendar years 2002 through 2015 and payroll tax liabilities for the period 2006 through 2015, FRANCIS J. O'REILLY, the defendant, submitted to the IRS a Form 656, Offer

in Compromise, and a Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals (collectively, the "2016 Offer in Compromise"). The 2016 Offer in Compromise proposed settling O'REILLY's outstanding tax liabilities, which totaled at least approximately \$691,561, for \$12,400.

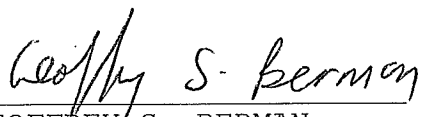
15. In the 2016 Offer in Compromise, which FRANCIS J. O'REILLY, the defendant, signed under penalty of perjury, O'REILLY made several material misstatements and omissions regarding his income and assets. Among other things, O'REILLY's 2016 Offer in Compromise: (a) failed to disclose the existence of O'REILLY's Attorney Trust Account, from which, as described above, O'REILLY drew substantial income; (b) failed to disclose real property and land that O'REILLY owns in Socorro County, New Mexico; and (c) failed to disclose a 2010 Lincoln vehicle that O'REILLY had recently purchased for approximately \$16,000.

#### **STATUTORY ALLEGATION**

16. From in or about April 2016 through the date of the filing of this Information, in the Southern District of New York and elsewhere, FRANCIS J. O'REILLY, the defendant, willfully and knowingly did attempt to evade and defeat a substantial part of the income tax due and owing by O'REILLY to the United States of America for the calendar year 2015 by

various means, including, among others, (a) preparing and filing a false and fraudulent 2015 Form 1040 that substantially understated O'REILLY's income; and (b) making material false statements to the IRS in an effort to conceal the nature and extent of O'REILLY's income and assets.

(Title 26, United States Code, Section 7201.)

  
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GEOFFREY S. BERMAN  
United States Attorney.

Form No. USA-33s-274 (Ed. 9-25-58)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

FRANCIS J. O'REILLY,

Defendant.

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INFORMATION

(26 U.S.C. §§ 7201, 7202.)

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GEOFFREY S. BERMAN  
United States Attorney

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