

FILED 18 NOV 15 11:26 USDC-ORP

**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

**UNITED STATES OF AMERICA,**

Case No. 3:15-CR- 00410-HZ

**v.**

**INDICTMENT**

**GARY B. BERTONI,**

**26 U.S.C. § 7202**

**Defendant.**

**THE GRAND JURY CHARGES:**

**Introductory Allegations**

***Parties and Entities***

1. At all times relevant to this Indictment, Gary B. BERTONI was a resident of Lake Oswego, Oregon.
2. At all times relevant to this Indictment, Bertoni & Associates, LLC (hereinafter "LAW FIRM") was a limited liability corporation doing business in Portland, Oregon, which is within the District of Oregon.
3. In or about November 2007 defendant BERTONI created LAW FIRM, a sole member limited liability corporation in the State of Oregon.
4. From November 2007 to at least July 2012, BERTONI was the sole member and general manager of LAW FIRM and had significant control of LAW FIRM.

5. As the sole member and general manager of LAW FIRM, BERTONI exercised significant control over LAW FIRM business affairs and finances, controlled all LAW FIRM bank accounts, possessed the authority to hire and fire employees, made decisions as to the disbursement of funds and payment of creditors, and possessed check-signing authority.

*Employment Tax Withholding*

6. At all times relevant to this Indictment, LAW FIRM withheld taxes from its employees' paychecks, including federal income taxes, and Medicare and social security taxes (often referred to as Federal Insurance Contribution Act or "FICA" taxes). These taxes will be referred to in this Indictment collectively as "payroll taxes."

7. At all times relevant to this Indictment, LAW FIRM was required to make deposits of the payroll taxes to the Internal Revenue Service on a periodic basis. In addition, LAW FIRM was required to file, at the end of the month following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of social security and Medicare taxes due, and the total tax deposits. For example, the Form 941 for the 2nd quarter of 2009 was due on or before July 31, 2009, because the 2nd calendar quarter ended on June 30, 2009.

8. As the sole owner and general manager of LAW FIRM, defendant BERTONI was a "responsible person," that is, he had the corporate responsibility to collect, truthfully account for, and pay over LAW FIRM's payroll taxes.

9. Throughout the calendar years 2009 through 2011, LAW FIRM withheld tax payments from its employees' paychecks. Beginning in approximately the first quarter of 2009,

however, LAW FIRM failed to pay over fully to the IRS those payroll taxes withheld from the total taxable wages of its employees as they became due.

10. During the calendar years 2009, 2010, and 2011, LAW FIRM further failed to timely file quarterly employment tax returns (Forms 941) with the Internal Revenue Service.

11. During the period of January 2009 through at least July 2012, defendant BERTONI caused LAW FIRM to make thousands of dollars of expenditures for defendant's personal benefit while, at the same time, failing to pay over to the Internal Revenue Service payroll tax withheld from LAW FIRM employees' paychecks and, further, failing to remit monies withheld from LAW FIRM employees' paychecks for various employee benefits, including health insurance and retirement account contributions. For example, BERTONI caused LAW FIRM to make payments to BERTONI's personal bank accounts totaling more than \$300,000 during the 2009, 2010, and 2011 calendar years.

12. Altogether, during the ten calendar quarters alleged in Counts 1-10 of this Indictment, LAW FIRM failed to account for and pay over approximately \$184,791 in payroll taxes.

**Counts 1-10**  
**Failure to Pay Over Employment Tax**  
**(26 U.S.C. § 7202)**

13. The Grand Jury hereby repeats and re-alleges paragraphs 1 – 12 of this Indictment as if fully set forth here.

14. Beginning on or about July 31, 2009, and continuing up to and including on or about October 31, 2011, in the District of Oregon, the defendant, BERTONI, a responsible person of LAW FIRM, did willfully fail to truthfully account for, collect, and pay over to the United States, namely the Internal Revenue Service, the federal income taxes and Federal

Insurance Contributions Act ("FICA") taxes withheld and due and owing to the United States on behalf of LAW FIRM and its employees, in the amounts set forth in the table below, for each of the following quarters set forth in the table below, with each calendar quarter constituting a separate count of this Indictment:

<b>Count</b>	<b>Quarter</b>		<b>Quarterly Due Date</b>	<b>Approx. Tax Due</b>
1	2009	2nd	Jul. 31, 2009	\$18,414
2	2009	3rd	Oct. 31, 2009	\$20,658
3	2009	4th	Jan. 31, 2010	\$19,261
4	2010	1st	Apr. 30, 2010	\$18,831
5	2010	2nd	Jul. 31, 2010	\$19,079
6	2010	3rd	Oct. 31, 2010	\$17,421
7	2010	4th	Jan. 31, 2011	\$17,579
8	2011	1st	Apr. 30, 2011	\$17,640
9	2011	2nd	Jul. 31, 2011	\$17,270
10	2011	3rd	Oct. 31, 2011	\$18,636

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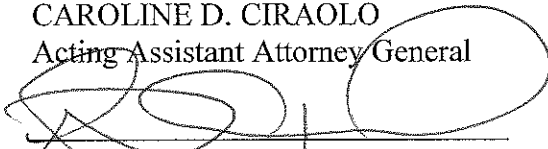
15. Each of these counts is a separate violation of Title 26, United States Code,  
Section 7202.

DATED this 18<sup>th</sup> day of November, 2015.

A TRUE BILL.

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OFFICIATING FOREPERSON

Presented By:  
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