

from that time Defendant DARRELL SMITH exercised significant control over the finances of Permeate.

Employment Tax Withholdings

4. At all times relevant to this Indictment, Permeate paid wages to its employees and was required by law to withhold employment taxes from the total taxable wages of its employees, including Medicare and Social Security taxes (often referred to as Federal Insurance Contribution Act or “FICA” taxes) and federal income tax. Those taxes will be referred to in this Indictment collectively as “employment taxes.”

5. At the end of each calendar quarter, Permeate was required to file with the Internal Revenue Service (“IRS”) 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 withheld, and the total taxes due to be paid over to the IRS.

6. As an individual with significant control over the finances of Permeate, Defendant RANDY LESS was a “responsible person,” that is, he had a corporate responsibility to collect, truthfully account for, and pay over to the IRS employment taxes on behalf of Permeate’s employees.

7. As an individual with significant control over the finances of Permeate, Defendant DARRELL SMITH was a “responsible person,” that is, he had a

corporate responsibility to collect, truthfully account for, and pay over to the IRS employment taxes on behalf of Permeate's employees.

8. Throughout the calendar years 2009, 2010, 2011, and 2012, Permeate withheld employment taxes from the total taxable wages of its employees. However, beginning in at least October 2009, Permeate failed to pay over fully to the IRS those employment taxes withheld from the total taxable wages of its employees in at least twelve calendar quarters.

9. During the calendar years 2009, 2010, 2011, and 2012, Permeate further failed to file timely at least eight quarterly employment tax returns (Form 941) with the IRS. Each Form 941 was due to be filed at the end of the month following the end of the corresponding calendar quarter. For example, the Form 941 for the third quarter of 2009 was due on or before October 31, 2009, since the third calendar quarter ended on September 30, 2009.

10. Altogether, during at least eleven calendar quarters in 2009, 2010, 2011, and 2012, Permeate failed to truthfully account for and pay over approximately \$423,975 in employment taxes.

Counts 1-5

Failure to Account For and Pay Over Employment Tax

11. The Grand Jury hereby repeats and realleges paragraphs 1 through 10 of this Indictment as if fully set forth here.

12. On or about the dates set forth below, in the Northern District of Iowa, the Defendant, RANDY LESS, a responsible person of Permeate, did willfully fail to

truthfully account for and pay over to the United States, namely the Internal Revenue Service, all of the federal income taxes withheld and Federal Insurance Contributions Act (“FICA”) taxes due and owing to the United States on behalf of Permeate and its employees, for each of the following quarters, with each calendar quarter constituting a separate count of this Indictment:

Count	Quarter		Quarterly Due Date	Approx. Tax Due
1	2009	4th	Jan. 31, 2010	\$8,711
2	2010	1st	Apr. 30, 2010	\$13,954
3	2010	2nd	Jul. 31, 2010	\$18,920
4	2010	3rd	Oct. 31, 2010	\$28,569
5	2010	4th	Jan. 31, 2011	\$45,926

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

Counts 6–11

Failure to Account For and Pay Over Employment Tax

13. The Grand Jury hereby repeats and realleges paragraphs 1 through 10 of this Indictment as if fully set forth here.

14. On or about the dates set forth below, in the Northern District of Iowa, Defendants RANDY LESS and DARRELL SMITH, responsible persons of Permeate, did willfully fail to truthfully account for and pay over to the United States, namely the Internal Revenue Service, all of the federal income taxes withheld and Federal Insurance Contributions Act (“FICA”) taxes due and owing to the United States on behalf of Permeate and its employees, for each of the following

quarters, with each calendar quarter constituting a separate count of this
Indictment:

Count	Quarter		Quarterly Due Date	Approx. Tax Due
6	2011	1st	Apr. 30, 2011	\$32,141
7	2011	2nd	Jul. 31, 2011	\$32,022
8	2011	4th	Jan. 31, 2012	\$30,559
9	2012	1st	Apr. 30, 2012	\$52,624
10	2012	2nd	Jul. 31, 2012	\$85,267
11	2012	3rd	Oct. 31, 2012	\$75,282

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

A TRUE BILL
s/Foreperson

Grand Jury Foreperson

Date

1/21/16

KEVIN W. TECHAU
United States Attorney

By:



MATTHEW R. HOFFMAN
Trial Attorney
Tax Division

for Timothy L. Vavricek

TIMOTHY L. VAVRICEK
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