

FILED - USDC -NH
2024 JUN 3 PM3:57

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	)	
	)	No. <u>24-cr-62-LM-AJ-01</u>
v.	)	
	)	Willful Failure to Account For
ANDREW PARK,	)	and Pay Over Tax
	)	(26 U.S.C. § 7202)
Defendant.	)	(Count 1)
	)	
	)	Willful Failure to File Tax Return
	)	(26 U.S.C. § 7203)
	)	(Count 2)
	)	

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

At all times relevant to this Information:

Introduction

1. ANDREW PARK was a resident of the State of New Hampshire.
2. In or around 2014, ANDREW PARK co-founded a startup software business. ANDREW PARK operated Company 1 out of his homes in Hanover, New Hampshire and Bedford, New Hampshire. Company 1 also had offices and employees in several other states.
3. From in or around 2014 to in or around 2023, ANDREW PARK was employed by Company 1 as its Chief Executive Officer.
4. ANDREW PARK was responsible for all financial matters related to Company 1. Among other responsibilities, ANDREW PARK oversaw Company 1's books and records, managed Company 1's bank accounts, caused Company 1's employees to be paid and ensured that federal, state, and local tax taxes were withheld from their pay, and caused Company 1 to

issue annual Forms W-2 to Company 1's employees. ANDREW PARK had full access to Company 1's finances, including its bank account, financial ledgers, online payroll service account, and company banking card.

5. The Internal Revenue Service ("IRS") was an agency of the United States within the Department of the Treasury responsible for enforcing and administering the tax laws of the United States.

6. A Form 1040, U.S. Individual Income Tax Return, was a tax return filed with the IRS wherein a taxpayer reported, among other items, the taxpayer's income, deductions and credits, and the amount of tax owed or tax refund claimed.

7. An IRS Form W-2, Wage and Tax Statement, was a form required to be filed by every employer engaged in a trade or business who pays remuneration, including noncash payments of \$600 or more for the year for services performed by an employee, for each employee from whom income, Social Security, or Medicare tax was withheld, or income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

Employment Tax Withholding

8. Employers were required to withhold, truthfully account for, and pay over to the IRS amounts from their employees' gross pay, including federal income taxes and Federal Insurance Contribution Act ("FICA") taxes, which represented Social Security and Medicare taxes. These taxes were collectively referred to as "trust fund taxes" because employers were required to hold the withheld amounts in trust until paid over to the United States. Employers

were required to remit these withheld trust fund taxes to the IRS on a quarterly basis, no later than the last day of the month following the end of each quarter.

9. In addition to the trust fund taxes withheld from employees' pay, employers were separately required to make contributions under FICA for Social Security and Medicare that matched the amounts withheld from their employees' pay for those purposes. Such employer contributions were likewise required to be remitted to the IRS on a quarterly basis, no later than the last day of the month following the end of each quarter. Collectively, these five components required to be remitted quarterly were commonly referred to as "employment taxes," made up of the trust fund taxes withheld (individual, Social Security, and Medicare), and the matching amounts contributed by the employer (Social Security and Medicare).

10. Employers were required to file, no later than the last day of the month following the end of each quarter, a Form 941, Employer's Quarterly Federal Tax Return, setting forth the total amount of income taxes withheld, the total amount of Social Security and Medicare taxes due, and the total tax deposits.

11. ANDREW PARK exercised control over Company 1's affairs by, among other acts, hiring and supervising employees, paying employees, controlling Company 1's bank accounts, and signing forms submitted to state tax agencies on behalf of Company 1. Thus, ANDREW PARK was a responsible person for collecting trust fund taxes, accounting for employment taxes by filing Forms 941 with the IRS, and paying over to the IRS the trust fund taxes for Company 1's employees.

12. Starting in or around 2014, and continuing through in or around 2021, ANDREW PARK was responsible for preparing and caused to be prepared, Forms W-2, Wage

and Tax Statement, to be issued annually to all employees of Company 1 other than himself. These Forms W-2 reported federal income, Social Security, and Medicare taxes withheld from employees' pay for each calendar year.

13. ANDREW PARK enrolled in an online payroll service to pay Company 1's employees. Starting in or around at least 2016, and continuing through in or around 2021, ANDREW PARK used this payroll service to issue Forms W-2 and cause wages to be paid through direct deposit to every employee of Company 1 other than the defendant.

14. ANDREW PARK paid himself by transferring money from Company 1's bank account directly into his personal bank account in regular and recurring amounts. These amounts represented his wages from Company 1. The payroll service did not issue a Form W-2 to ANDREW PARK.

15. The payroll service in which ANDREW PARK enrolled had the ability to directly deposit employees' wages and issue Forms W-2s, but it did not have the ability to automatically file IRS Forms 941, Employer's Quarterly Federal Tax Return, and related state tax forms, or pay over federal and state employment taxes to the IRS and related state tax agencies.

16. The payroll service also offered a separate service that had the ability to automatically file IRS Forms 941, Employer's Quarterly Federal Tax Return, and related state tax forms, as well as pay over federal and state employment taxes directly to the IRS and related state tax agencies. ANDREW PARK did not enroll in this service.

17. The payroll service sent regular notifications to ANDREW PARK informing him when taxes were due to be filed and paid to the IRS and to state tax agencies. For example,

between in or around January 2017 and in or around August 2021, the payroll service sent the defendant hundreds of notices providing messages such as that Company 1 “has payroll taxes due soon.”

18. By in or around at least November 2020, employees of Company 1 notified the defendant that the Social Security withholdings reported on their Forms W-2 were not reflected on statements they received from the Social Security Administration.

19. For at least the quarters reflected on the chart below, ANDREW PARK willfully failed to truthfully account for and pay over to the IRS all of the federal income taxes withheld and FICA taxes due and owing to the United States on behalf of Company 1 and its employees:

Calendar Quarter	Due Date of Form 941	Approximate Employment Taxes Withheld But Not Paid Over	Approximate Employer Portion of FICA Taxes Not Paid Over	Approximate Total Employment Taxes Due
2017 Quarter 1	April 30, 2017	\$234,670.79	\$78,545.65	\$313,216.44
2017 Quarter 2	July 31, 2017	\$303,818.70	\$93,518.38	\$397,337.08
2017 Quarter 3	October 31, 2017	\$350,497.78	\$110,504.59	\$461,002.37
2017 Quarter 4	January 31, 2018	\$408,242.20	\$117,421.84	\$525,664.04
2018 Quarter 1	April 30, 2018	\$397,860.61	\$151,477.68	\$549,338.29
2018 Quarter 2	July 31, 2018	\$495,714.75	\$183,341.81	\$679,056.56
2018 Quarter 3	October 31, 2018	\$534,088.28	\$185,921.07	\$720,009.35
2018 Quarter 4	January 31, 2019	\$541,987.95	\$178,612.43	\$720,600.38
2019 Quarter 1	April 30, 2019	\$573,802.28	\$219,506.00	\$793,308.28
2019 Quarter 2	July 31, 2019	\$632,518.19	\$220,831.92	\$853,350.11

2019 Quarter 3	October 31, 2019	\$594,692.20	\$201,633.05	\$796,325.25
2019 Quarter 4	January 31, 2020	\$594,033.75	\$184,564.01	\$778,597.76
2020 Quarter 1	April 30, 2020	\$639,281.44	\$245,254.73	\$884,536.17
2020 Quarter 2	July 31, 2020	\$577,188.12	\$227,064.00	\$804,252.12
2020 Quarter 3	October 31, 2020	\$667,511.42	\$229,748.87	\$897,260.29
2020 Quarter 4	January 31, 2021	\$602,449.93	\$185,402.01	\$787,851.94
2021 Quarter 1	April 30, 2021	\$770,424.00	\$291,375.56	\$1,061,799.56
2021 Quarter 2	July 31, 2021	\$908,627.49	\$324,649.29	\$1,233,276.78
2021 Quarter 3	October 31, 2021	\$757,543.48	\$319,620.43	\$1,077,163.91

Willful Failure to File Tax Return

20. ANDREW PARK did not timely file Forms 1040 for each year between 2013 and 2020, and for each year between 2015 and 2020 he did not pay federal taxes on income he received from Company 1.

21. Every year between 2013 through 2020, ANDREW PARK and his wife's combined gross income exceeded the income filing requirement, requiring them to file a Form 1040 or other tax return. Although ANDREW PARK knew he was legally required to file a tax return for his wife and himself for each of these years, he did not do so.

22. From at least in or about July 2016 through in or about September 2021, ANDREW PARK used Company 1's bank account, which he controlled, to make regular transfers to his personal bank account as wages. He did not report this income to the IRS and he did not withhold federal income, Social Security, and Medicare taxes from his wages.

23. Likewise, each year from 2017 through 2020, the defendant transferred a yearly total of approximately \$250,000 from Company 1's bank account at Bank of America to his personal bank account at JP Morgan Chase, in regular and recurring amounts, representing his wages for each such year. During the 2017 through 2020 tax years, he did not report this income to the IRS.

24. As reflected on the chart below, from in and around 2016 through in and around 2020, ANDREW PARK had and received gross income in excess of the federal filing threshold and so was required by law to make an income tax return to the IRS:

Tax Year	Gross Income Filing Requirement	Tax Return Due Date	Approximate Park Household Taxable Income	Approximate Taxes Withheld From Park's Wife's Wages	Approximate Additional Taxes Due and Owing
2016	\$4,050	April 18, 2017	\$461,388	\$55,149	\$72,296
2017	\$4,050	April 17, 2018	\$669,913	\$60,772	\$129,330
2018	\$5	April 15, 2019	\$508,904	\$56,514	\$75,091
2019	\$5	July 15, 2020	\$530,407	\$58,506	\$79,877
2020	\$5	May 17, 2021	\$487,330	\$44,457	\$78,071
Total					\$434,665

COUNT ONE

[26 U.S.C. § 7202 – Willful Failure to Account For and Pay Over Employment Tax]

25. The United States Attorney realleges paragraphs 1 through 19.

26. On or about April 30, 2020, in the District of New Hampshire and elsewhere, the defendant,

ANDREW PARK,

did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld and Federal Insurance Contribution Act (“FICA”) taxes due and owing to the United States on behalf of Company 1 and its employees, for the 1st Quarter of 2020. All in violation of Title 26, United States Code, Section 7202.

COUNT TWO

[26 U.S.C. § 7203 – Willful Failure to File Tax Return]

27. The United States Attorney realleges paragraphs 1 through 7 and 20 through 24.

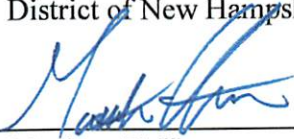
28. During the calendar year 2017, in the District of New Hampshire and elsewhere, the defendant

ANDREW PARK,

A resident of Hanover, New Hampshire and Bedford, New Hampshire, had and received gross income in excess of \$4,050. By reason of such gross income, he was required by law, following the close of the calendar year 2017, and on or before April 17, 2018, to make an income tax return to the Internal Revenue Service, stating specifically the items of his gross income and any deductions and credits to which he was entitled. Well knowing and believing all of the foregoing, he willfully failed, on or about April 17, 2018, to make an income tax return. All in violation of Title 26, United States Code, Section 7203.

Dated: May 31, 2024

JANE E. YOUNG
United States Attorney
District of New Hampshire

By: 

Matthew T. Hunter
Assistant U.S. Attorney

Eric B. Powers
Assistant Chief, Tax Division,
Western Criminal Enforcement Section