
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

TITO VITERI

and

MARIA YEPEZ

:
: Hon. Tonianne J. Bongiovanni
:
: Mag. No. 18-4506 (TJB)
:
: **CRIMINAL COMPLAINT**
:
:

I, Paul J. Donahue, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Internal Revenue Service, and that this Complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.



Paul J. Donahue, Special Agent
Internal Revenue Service

Sworn to before me and subscribed in my presence,

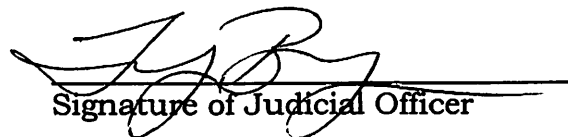
March 22, 2018

Date

at Trenton, New Jersey

City and State

Honorable Tonianne J. Bongiovanni
United States Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

ATTACHMENT A

From in or about 2008 through in or about 2016, in Mercer County, in the District of New Jersey and elsewhere, the defendants,

TITO VITERI
and
MARIA YEPEZ,

did knowingly and intentionally conspire and agree with each other and with others to defraud the United States and a department and agency thereof, specifically, the Internal Revenue Service of the Department of Treasury, by impeding, impairing, obstructing and defeating the lawful governmental functions of the Internal Revenue Service to ascertain, compute, assess, and collect income taxes.

In violation of Title 18, United States Code, Section 371.

ATTACHMENT B

I, Paul J. Donahue, a Special Agent with the Internal Revenue Service, having participated in this investigation and having discussed this matter with other law enforcement officers involved in this investigation, have knowledge of the following facts:

Background

1. At all times relevant to this complaint, defendant TITO VITERI ("VITERI") owned and operated numerous commercial trucking companies that performed delivery services (collectively, the "Viteri Trucking Companies"). The Viteri Trucking Companies, which all operated in New Jersey, except for one which operated in Maryland, included: Tito Viteri Trucking, Inc. ("TVT"); TIV Trucking Corp. ("TIV"); FAV Transportation ("FAV"); Tacoma Delivery Services ("TAC"); BiancaV LLC ("BiancaV"); IsiasV LLC ("IsiasV"); UST Transportation LLC ("UST"); FAV Transportation 2, LLC ("FAV 2"); FAV Transportation III Inc. ("FAV III"); RTV Trucking, LLC ("RTV"); and M L Logistics ("MLL").¹

2. Defendant MARIA YEPEZ ("YEPEZ") was VITERI's significant other. Defendants YEPEZ and VITERI resided together in New Jersey with their children. Defendant YEPEZ was the nominal owner or sole member of TIV, FAV, and FAV2.

Employment Taxes

3. Pursuant to the Internal Revenue Code and associated statutes and regulations, including the Federal Insurance Contributions Act ("FICA"), employers are required to withhold amounts from the paychecks of their employees to cover individual income, Social Security, and Medicare tax obligations. These withheld amounts are referred to as "trust fund" amounts. Employers are required to remit these withheld trust fund amounts over to the Internal Revenue Service ("IRS") on a quarterly basis. In addition, employers are required to make payments pursuant to the Federal Unemployment Tax Act ("FUTA"). Those payments enable state unemployment systems to provide unemployment compensation to workers who have lost their jobs.

4. In addition to the trust fund amounts that must be withheld from pay, employers are separately required to make contributions under FICA for

¹ The Viteri Trucking Companies were established in the following years: TVT in 2002; TIV in 2007; BiancaV, IsiasV, and UST in 2009; FAV in 2010; FAV 2 in 2011; FAV III in 2012; and TAC, RTV, and MLL in 2013. TVT, TIV, FAV, BiancaV, IsiasV, FAV 2, and FAV III were all registered with the IRS with the address 79 Old Amboy Road in Trenton, New Jersey.

Social Security and Medicare in amounts matching the amounts withheld from their employees' pay for those purposes. Such employer contributions are likewise required to be remitted to the IRS on a quarterly basis.

5. Collectively, all these components that are required to be remitted quarterly are commonly referred to as "employment taxes," made up of the trust fund amounts withheld (individual income, Social Security, and Medicare taxes) and the matching amounts contributed. Employment taxes are required to be reported to the IRS by the employer on a Form 941, Employer's Quarterly Federal Tax Return.

6. Any person having authority to exercise significant control over an employer's financial affairs is deemed responsible for collecting, accounting for, and paying over employment taxes, regardless of whether the individual exercised such control in fact. More than one person may be considered a "responsible person" for the purpose of collecting, accounting for, and paying over employment taxes, including trust fund amounts and employers' matching amounts.

7. Workers designated as Form 1099 workers, as opposed to W2 employees, are treated as self-employed workers or independent contractors. Employers do not generally have to withhold or pay any taxes on payments to independent contractors/1099 workers.

The Conspiracy

8. It was the object of the conspiracy for VITERI and YEPEZ to evade the payment of personal and business-related taxes by utilizing nominees to conceal both business-related and personal assets.

Manner and Means of the Conspiracy

9. It was part of the conspiracy that defendants VITERI and YEPEZ engaged in the following: (1) "pyramiding" companies and utilizing nominees² as the purported owners of several Viteri Trucking Companies in order to shield

² According to the IRS, a "nominee" is someone who is given limited authority to act on behalf of an entity, usually for a limited period of time, and usually during the formation of the entity. The "principal officer, general partner," etc., as defined by the IRS, is the true "responsible party" for the entity, instead of a nominee. The "responsible party" is the individual or entity that controls, manages, or directs the entity and the disposition of the entity's funds and assets, unlike a nominee, who is given little or no authority over the entity's assets.

business assets while incurring Form 941 tax liabilities;³ (2) failing to file timely and accurate Forms 941 by falsely categorizing employees as independent contractors (Form 1099 employees) for whom employment taxes did not have to be paid; (3) receiving unreported kickback income from an employee; and (4) concealing personal income and/or assets by, among other things, the use of nominees and depositing money into their child's bank account.

Overt Acts

Pyramiding Companies, Nominees, Form 941 Liability

10. In or about 2008, the IRS conducted an audit of VITERI's personal and TVT business tax returns. The IRS audit resulted in VITERI owing over \$1 million in additional personal and business-related taxes, penalties, and interest for tax years 2005 through 2008. At that time, the IRS audit determined that VITERI owed approximately \$315,000 in personal taxes and that TVT owed approximately \$785,000 in taxes.

11. As the owner of TVT, VITERI was the responsible person for collecting trust fund taxes and filing Form 941 quarterly employment tax returns. In addition to being delinquent in filing his personal and business tax returns, including TVT's Form 941 quarterly employment tax filings, the audit determined, among other things, that VITERI failed to properly classify workers as employees, as opposed to independent contractors, for employment tax purposes. As a result, VITERI avoided paying employment taxes on those employee wages. In or about June 2009, during a meeting with IRS audit officials, VITERI acknowledged that the TVT truck drivers were his employees and not independent contractors. Notwithstanding his acknowledgment that workers for the Viteri Trucking Companies were employees and not independent contractors, and being told on several occasions in 2010 and 2011 by IRS officials and the payroll company VITERI hired that his workers needed to be classified as employees, VITERI continued to pay a majority of his workers as independent contractors in order to evade paying employment taxes on their wages.⁴

³ "Pyramiding" of employment taxes is a fraudulent practice where a business withholds taxes from its employees, but intentionally fails to remit them to the IRS. Businesses involved in pyramiding incur significant IRS liabilities and then frequently cease operations, and start new a new business under a different name and begin a new scheme.

⁴ For example, in 2012, although the majority of FAV's workers should have been classified as employees, FAV paid approximately \$3,398,040 in wages to independent contractors and only \$674,219 to W2 employees.

12. Additionally, the 2008 audit concluded that VITERI made personal expenditures, such as home mortgage payments, payments to pharmacies, and jewelry purchases, out of his business accounts. VITERI subsequently failed to report any of those personal expenditures on his individual income tax returns and the IRS informed VITERI that he was required to do so. For tax year 2006, for example, VITERI's reported on his 1040 Individual Tax Return taxable income of \$0.

13. Although VITERI owed over \$1 million in unpaid personal and TVT business-related taxes after the 2008 audit, in July 2009, VITERI (doing business as BiancaV which he opened in July 2009), purchased the property located at 79 Amboy Avenue in Trenton and paid \$325,000 at the time of closing. VITERI opened BiancaV and purchased the property in that company's name in order shield his assets and continue to evade payment to the IRS. Just prior to the July 2009 purchase, however, in June 2009, VITERI met with IRS revenue agents regarding his tax liability and VITERI advised the IRS that his business had declined and he would have difficulty paying his tax liability.

14. Despite the IRS's attempts to collect VITERI's outstanding tax liability, VITERI failed to pay. Between January 2010 and April 2010, the IRS filed liens and notices of intent to levy against the assets of TVT as a result of the unpaid business taxes owed by the company. In or around the same time, in April 2010, VITERI signed a truck lease agreement between TVT and FAV. FAV had just been established in March 2010 with YEPEZ listed as the "sole member." The truck leasing agreement between the two companies, however, listed VITERI as the president of both TVT and FAV.

15. Between in or about November and December 2010, VITERI executed bills of sale in which TVT purportedly sold numerous trucks to FAV in the amount of \$37,500. VITERI signed the bills of sale as the seller and YEPEZ signed as the buyer. Additional bills of sale from between in or about August 2011 and November 2011 show that TVT purportedly sold more trucks to FAV in the amount of \$69,000. An interview of VITERI's tax preparer revealed that there was no indication that any money was actually transferred from FAV/YEPEZ to TVT/VITERI as a result of these purported sales.

16. In transferring TVT's assets to FAV, after the IRS began enforcement action against TVT's assets, VITERI and YEPEZ conspired to evade the payment of taxes applicable to TVT. As a result of TVT incurring a substantial IRS debt, VITERI and YEPEZ ceased TVT operations and began operating under a new name (FAV) and a new nominee owner (YEPEZ). Although YEPEZ was the nominal owner of FAV, VITERI continued to operate the business and was the true owner of FAV. Significantly, in May 2012, FAV submitted an application to obtain workers' compensation insurance through

the New Jersey Workers Compensation Insurance Plan. VITERI signed the application documents under penalty of perjury as the 100% owner of FAV, which contradicted the FAV creation documents that listed YEPEZ as the owner.⁵

17. In or about August 2011, VITERI entered into an installment agreement pursuant to which VITERI was required to pay the IRS \$10,000 per month towards his TVT tax liability and \$5,000 towards his personal income tax liability. VITERI made these payments from in or about August 2011 to in or about December 2013. In speaking to law enforcement in or about July 2015, VITERI admitted that he stopped making the payments because he was not “bringing enough money home.”

18. As of March 2018, VITERI owed approximately \$1.3 million in personal income taxes. Furthermore, as of March 2018, VITERI and YEPEZ owed an additional approximately \$1.3 million in unpaid business-related taxes for TVT and FAV.

Concealing Personal Income and Assets

19. It was further part of the conspiracy that VITERI and YEPEZ concealed personal income and assets by paying personal expenses from the business bank accounts of the Viteri Trucking Companies. At or around the same time that VITERI ceased making his required installment payments to the IRS, VITERI and YEPEZ held a residential lease for a property in Chesterfield, New Jersey pursuant to which they paid \$3,000 per month in rent. VITERI and YEPEZ entered into the lease in December 2012 and made a down payment, in the form a check drawn off of an FAV bank account, in the amount of \$4,500. These personal expenditures occurred after the 2008 audit when the IRS admonished VITERI that paying personal expenditures out of his business accounts would be considered personal income and had to be accounted for on his personal income tax returns. VITERI failed to report those personal expenditures out of his business accounts for his residential rent on his individual income tax returns.

20. Although VITERI stopped making his required payments to the IRS in December 2013, from February 2013 to February 2016, VITERI and YEPEZ

⁵ After having been established in 2010, FAV subsequently ceased operations in September 2013 after accumulating over \$160,000 in tax liability and establishing a debt of over \$500,000 to a workers' compensation insurance carrier as a result of misrepresentations made in FAV's application for insurance. In July 2013, TAC was established with one of VITERI's relatives as the owner. Just as VITERI was the true owner of FAV after TVT ceased operations, VITERI was the true owner of TAC even though the company was in the name of his nominee relative.

made approximately \$111,000 in rental payments for the property in Chesterfield. Bank records show that all of the rental payments for the Chesterfield property were paid from Viteri Trucking Companies' bank accounts. Records for the Viteri Trucking Companies revealed that more than half of the rental payments for VITERI and YEPEZ's personal residence were improperly classified in the company books and records as company-related business expenses, to include rent, equipment rentals, and parking expenses. The remaining rental payments that were paid with business funds were not reported anywhere in company books and records.

21. It was further part of the conspiracy that in January 2013, VITERI, as a means of further concealing his personal income, directed an FAV employee ("Employee 1") to kickback cash from his/her paycheck to him. Employee 1 began working for FAV in or about October 2012. Employee 1's salary when he/she started was \$200 per week and subsequently increased to \$500 per week. In January 2013, VITERI advised Employee 1 that his/her weekly salary would increase to \$2,500 per week, however, VITERI directed Employee 1 to remit \$2,000 of that money back to him. Employee 1 complied and from in or about February 2013 to in or about September 2013 when Employee 1 ceased working at FAV, Employee 1 gave VITERI the \$2,000 per week kickback. VITERI subsequently failed to report any of those payments on his individual income tax returns.

22. It was further part of the conspiracy that VITERI and YEPEZ to put personal assets in the names of family members in order to conceal their personal assets from the IRS. In or about April 2015, VITERI and YEPEZ met with a building company ("Home Builder 1") regarding the purchase of a home in a new development in Cream Ridge, New Jersey. During the meeting, VITERI and YEPEZ filled out a real estate registration form on which they listed "Tito, Maria, Viteri" as the customers and VITERI signed the document.

23. On or about May 12, 2015, a TD Bank checking account was opened in the name of VITERI's mother, M.L. On the same day, deposits totaling \$979,000 were made into the account. The deposits included: (1) \$302,000 from a TD Bank account held in the name of F.V., VITERI and YEPEZ's then five year old daughter; (2) \$238,000 from a TAC business account; (3) \$243,000 from an MLL business account; and (4) \$196,000 from an attorney's account. Later that same day, the money from the TAC and MLL bank accounts was transferred back to their respective business accounts. A copy of the account balance showing \$979,000, however, was provided to Home Builder 1 as proof of funds to move forward with the purchase of the home in Cream Ridge.

24. On May 17, 2015, YEPEZ signed an agreement of sale with Home Builder 1, on behalf of M.L., for the purchase of the home.

25. On or about March 23, 2016, VITERI and YEPEZ, using M.L. as the nominee owner, purchased the property in Cream Ridge for \$929,653. As part of the purchase, VITERI and YEPEZ made a down payment of approximately \$500,000. M.L. purportedly obtained a mortgage in the amount of \$400,000. At the closing, YEPEZ signed the mortgage paperwork.⁶

26. It was further part of the conspiracy that VITERI and YEPEZ concealed income from the IRS by depositing large sums of money into a bank account held in their child's name. Specifically, analysis of a TD Bank Young Saver account in the name of F.V., VITERI and YEPEZ's then seven year old daughter, revealed that from in or about July 2014 to in or about August 2015, over \$300,000 was deposited into F.V.'s account.

27. As noted above in paragraph 23, F.V.'s TD Bank Young Savers account was utilized to issue payments to Home Builder 1 via an account in the name of M.L. Those payments to Home Builder 1 included \$69,500 on April 30, 2015 and \$302,000 on May 12, 2015.

28. Despite VITERI and YEPEZ's lavish purchase of an approximately \$1 million home and their extensive assets, VITERI and YEPEZ have continued to evade the payment of personal and business-related taxes to the IRS.

⁶ In March 2016, M.L. was also the named owner of TAC and MLL. According to employment records, from 2008 to 2013, M.L. had no reportable income and was listed as a homemaker on federal income tax returns. Although M.L. is the named owner for two Viteri Trucking Companies and purportedly purchased a \$929,653 in March 2016, M.L. left the United States and travelled to Ecuador on or about July 25, 2016 and has not returned to the United States since that time.