

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA, ) No. 5:06-cr-20582  
Plaintiff, )  
v. ) DEFENDANT’S MOTION FOR BILL OF  
MICHAEL BURT, ) PARTICULARS  
Defendant. )

COMES NOW the Defendant Michael Burt, by and through his counsel of record, and hereby moves this Court pursuant to Federal Rules of Criminal Procedure Rule 7(f) for an order directing the United States to furnish Defendant with a bill of particulars with respect to the matters listed below which are alleged in the indictment and which need to be more particularly set forth.

The Sixth Amendment requires that a citizen “be informed of the nature and cause of the accusation.” It is a well-settled principle of law that a person needs to know what law or duty was violated. *United States v. Cruikshank*, 92 U.S. 542 (1876); *Sheppard v. Rees*, 909 F.2d 1234 (9<sup>th</sup> Cir. 1989). “There are two considerations which require that an indictment charge all the elements of the crime. The first of these is the defendant's right to be protected from double jeopardy. The second consideration is the defendant's right to be indicted by a grand jury and *that the grand jury find probable cause as to each element of the crime.*” *U.S. v. Hart*, 640 F.2d 856 (6th Cir. 1981)(emphasis added).

A bill of particulars is necessary on the grounds that the indictment fails to state with particularity the information requested; many of the allegations are vague, ambiguous, and uninformative; the information is within the particular knowledge of

the United States Attorney; and all of the information is essential and necessary to enable Mr. Burt to adequately prepare for trial and to avoid prejudicial surprise at trial. The information is necessary to protect Mr. Burt against a second prosecution for the same offense. The failure to grant a bill of particulars will deprive Mr. Burt of his defenses to the charges contained in the indictment; arbitrarily compel him to stand trial thereunder; arbitrarily compel him to testify against himself in court; and arbitrarily deprive him of a fair trial without due process of law, in violation of the rights guaranteed him by the Fifth and Sixth Amendments of the United States Constitution.

#### **COUNTS 1-4**

26 U.S.C. § 7201 specifically provides, “Any person who willfully attempts in any manner to evade or defeat **any tax imposed by this title** or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.” (emphasis added). The Supreme Court has stated that there are three elements to the offense described by ' 7201. The elements are: 1) willfulness; 2) the existence of a tax deficiency; and 3) an affirmative act constituting an evasion or attempted evasion of the tax. *Sansone v. United States*, 380 U.S. 343, 351 (1965); see also *U.S. v. Curtis*, 782 F.2d 593 (6th Cir. 1986).

As to the element of willfulness, the Supreme Court has defined “willfulness” as the “voluntary, intentional violation of a known legal duty.” *United States v. Bishop*, 412 U.S. 346, 360 (1973). More recently, the Court explained that the term “willfully” as

used in the Tax Code creates a statutory exception to the traditional rule that all people are presumed to know the law. *Cheek v. United States*, 498 U.S. 192, 199-200 (1991). The Court explained that, although every person is generally presumed to know the law, the complexity and intricacy of the tax laws led Congress to create an exception to that rule. *Id.* at 200. Thus, part of the government’s burden in a Tax Evasion case is to prove beyond a reasonable doubt that defendant knew of his legal duty under the tax laws. *See id.* at 199-200. This burden can never be shifted to the Defendant and can only be shown by direct evidence of his knowledge of the statute(s). *U.S. v. Alt*, 996 F.2d 827 (6th Cir. 1993). The Supreme Court has held, “In certain cases involving willful violations of the tax laws, we have concluded that the jury must find that the Defendant was aware of the ***specific provision of the tax code*** that he is charged with violating.” *Bryan v. United States*, 524 U.S. 184, 200 (1998), citing *Cheek*, 498 U.S. at 201.

1. As to each count, what statute in title 26 imposes an income tax on Mr. Burt?
  - a. In addition, what specific document(s) will show that Mr. Burt had actual knowledge of the law imposing the income tax?
  - b. What specific witness(es) will testify that Mr. Burt had actual knowledge of the law imposing the income tax?
  - c. What document(s) or witness(es) will demonstrate that Mr. Burt voluntarily and intentionally violated that duty?
2. What statute in title 26 imposes the duty on Mr. Burt to pay income tax?
  - a. What specific document(s) will show that Mr. Burt had actual knowledge of the law imposing the duty to pay income tax?

b. What specific witness(es) will testify that Mr. Burt had actual knowledge of the law imposing the duty to pay income tax?

c. What document(s) or witness(es) will demonstrate that Mr. Burt voluntarily and intentionally violated that duty?

3. What document(s) or witness(es) will demonstrate that Mr. Burt had actual knowledge of 26 U.S.C. § 7201?

4. As to the questions 1 through 3, what specific provision(s) did the government inform the Grand Jury imposed those duties?

5. If the answer to question 4 is section 7201, please identify what the government made the Grand Jury aware of regarding what the actual elements were for them to find probable cause to believe Michael Burt had violated each judicially created element under section 7201?

6. Under the element of “willfulness,” what evidence was presented to the Grand Jury by the government that Michael Burt was aware of section 7201 as well as the judicially created elements under section 7201?

a. What evidence showed that Michael Burt was aware of such as of January 26, 2001 [count 1 of the indictment]?

b. What evidence showed that Michael Burt was aware of such as of April 15, 2000 [count 2 of the indictment]?

7. Please identify the name of the witness or witnesses who testified before the Grand Jury that returned the indictment in this case that Michael Burt had a tax deficiency owed for 1998, 1999, 2000 and 2001, to the United States of America?

a. Was the Grand Jury informed those deficiencies were no longer owed?

8. Please identify the name of any person who testified before the Grand Jury as an expert of the Internal Revenue Code, regulations, revenue procedures, and judicial decisions?

9. As to each count of the indictment, state whether the government, as part of its proof of the alleged offenses, intends to present evidence of any specific acts other than those alleged in the indictment?

a. If yes, describe with particularity all other such specific acts?

10. Is the non-filing of a tax return an act of omission or an affirmative act?

a. If it is an affirmative act, how is “failing to make an income tax return on or before April 15” an affirmative act?

11. What statute in title 26 imposes the duty on Mr. Burt to file an income tax return?

12. If it is not a statute, what regulation imposes the duty to file an income tax return?

a. What specific document(s) will show that Mr. Burt had actual knowledge of the law imposing the duty to file an income tax return?

b. What specific witness(es) will testify that Mr. Burt had actual knowledge of the law imposing the duty to file an income tax return?

c. What document(s) or witness(es) will demonstrate that Mr. Burt voluntarily and intentionally violated that duty?

13. Is the income tax return that Mr. Burt was required by law to make a Form 1040?

14. If the Form 1040 is not the required form, what form is the “income tax return”

that Mr. Burt was “required by law” to make?

- a. What law was the grand jury shown that imposed this “duty” to file an “income tax return,” whether it is the Form 1040 or a different income tax return?
  - b. What specific document(s) will show that Mr. Burt had actual knowledge of the law imposing the duty to make an “income tax return”?
  - c. What specific witness(es) will testify that Mr. Burt had actual knowledge of the law imposing the duty to file an “income tax return”?
  - d. What document(s) or witness(es) will demonstrate that Mr. Burt voluntarily and intentionally violated that duty?
15. What statute, regulation, or other authority required Mr. Burt “to make an income tax return on or before April 15, 2000”?
- a. What specific document(s) will show that Mr. Burt had actual knowledge of the law imposing the duty to make such by that date?
  - b. What specific witness(es) will testify that Mr. Burt had actual knowledge of the law imposing the duty?
  - c. What document(s) or witness(es) will demonstrate that Mr. Burt voluntarily and intentionally violated that duty?

In *Garner v. U.S.*, 424 U.S. 648 (1976), the Supreme Court stated that the information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a witness. The Court reaffirmed that the Fifth Amendment test for when the privilege can be relied upon after the incriminating

testimony is yielded was when the person was denied the “free choice to admit, to deny, or to refuse to answer.” *Lisenba v. California*, 314 U.S. 219, 241 (1941).

16. Please identify how Michael Burt had a choice to either remain silent and be subject to 26 U.S.C. ' §7201 or 7203 for that silence or be subject to 26 U.S.C. ' 7206 for the answers sections 7201 or 7203 forced him to give?

17. It is well-settled that a tax evasion charge can be either evasion of the assessment or evasion of the payment. Which is the charge in this case?

- a. If the charge is evasion of the payment, when was an assessment done?
  - i. Who did the assessment?
  - ii. What documentation was used to make the assessment?
- b. If the charge is evasion of the assessment, what steps did the IRS take to make an assessment?

Defendant reserves all rights without waiving any, including the right to amend this motion.

Respectfully submitted this 14<sup>th</sup> day of March, 2007.

/s/ Alan S. Richey  
Alan Stuart Richey  
Counsel for Michael Burt  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I did electronically file the foregoing motion using the court's CM/ECF system which will send notice of the filing to the attorney of record for the plaintiff, Richard L. Delonis, and any other counsel of record through the CM/ECF system.

Dated this 14<sup>th</sup> day of March, 2007.

/s/ Alan S. Richey  
Alan S. Richey