FILED
JAMES BONINI
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

2005 APR 14 A 8:57

EASTERN DIVISION

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

UNITED STATES OF AMERICA,	)	INFORMATION
	)	
Plaintiff,	)	JUDGE SMITH
	)	
v.	)	
	)	Case No. 2 : 05 cr 100
JOSEPH W. FLICKINGER,	)	Title 18, Sections 1341, 1343, 981
	)	United States Code
Defendant.	)	Forfeiture Allegation

COUNT 1
(Mail Fraud, 18 U.S.C. § 1341)

The United States Attorney charges:

The Defendant

1. During all relevant times to this Count, the defendant, JOSEPH W. FLICKINGER, operated a business known as American Financial, located at his residences, initially in Berea, Ohio, and subsequently in North Royalton, Ohio, and Port Clinton, Ohio, through which he provided tax return preparation and other tax-related and financial services. Defendant FLICKINGER represented himself to the public to be a tax law specialist, including the use of the title "Common Law Counselor."

Scheme to Defraud and Obtain Money

2. During the period from approximately late 1998, through spring 2002, the exact

dates unknown to the United States Attorney, Defendant FLICKINGER devised and intended to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations, as follows.

3. The purpose of the scheme was for Defendant FLICKINGER to defraud the Internal Revenue Service (IRS) and to defraud and obtain money from clients by inducing and assisting the clients to submit (a) false and frivolous documents to their employers and the IRS in an effort to stop withholding of taxes on their wages, (b) false claims to the IRS for a return of withheld taxes, and (c) false and frivolous documents to the IRS to thwart the agency's efforts to enforce the employers' obligation to withhold taxes and the employees' obligations to report and pay the income taxes owing on those wages. The manner and means by which the defendant carried out the scheme included but were not limited to the following:

4. Defendant FLICKINGER conducted seminars and made presentations to prospective clients in which he made various false statements about the IRS and federal income tax laws, including statements falsely denying the validity and applicability of those laws to income received as compensation for services.

5. Defendant FLICKINGER falsely told clients and prospective clients that he could "detax" them, which would purportedly enable them to work without having taxes withheld and without having to pay income taxes.

6. As part of the paid services provided by American Financial to its clients, Defendant FLICKINGER prepared and caused to be prepared false claims for refunds on behalf of clients, using federal individual income tax return forms (e.g., Form 1040 and Form 1040X), which listed the numeral "0" on all lines for reporting items of income or deductions, except for

the lines for listing payments and claims for refund, knowing that the clients had wage income and other items of income and deductions which the clients were required to report. These forms are referred to hereinafter as "zero returns." On each zero return for a client who had income taxes withheld that year, Defendant FLICKINGER falsely showed that the client had no income tax liability and falsely claimed a refund for the client in the entire amount of the client's withheld income tax, as reflected on the Form W-2 Wage and Tax Statement or Statements provided to him by the client.

7. In order to conceal his involvement in the preparation of his clients' zero returns for the tax years 1999 and 2000, Defendant FLICKINGER left the lines on the tax forms blank which called for the name and tax identification number for the paid preparer.

8. Defendant FLICKINGER generally had each client sign a typed affidavit (for the 1999 returns) or typed statement (for the 2000 returns), which was attached to and made part of the return, containing false and misleading statements about federal income tax laws and falsely stating that the client had zero income for that year.

9. During the relevant period of time, Defendant Flickinger prepared and caused to be prepared approximately 384 zero returns, containing combined false claims for refunds totaling approximately $2,320,545, when in fact, he knew that his clients should have reported and paid approximately $1,100,000 of additional taxes owing, above the amounts withheld, the exact amount to the United States Attorney unknown.

10. Defendant FLICKINGER provided documents for clients to provide to employers claiming exemption from withholding, knowing that the clients were not, in fact, entitled to claim such exemption. When employers refused to honor the claimed exemptions as not being valid,

Defendant FLICKINGER, through American Financial, sent letters to the employers falsely stating that required withholding was unlawful and requesting the employers to send enclosed documents containing frivolous demands on the IRS to prove the requirement to withhold taxes on the employees' wages.

11. Defendant FLICKINGER had many of his clients sign a Power of Attorney form which authorized him to receive information, but which did not authorize him to sign the client's name to any documents. In a number of instances, Defendant FLICKINGER, without the client's knowledge, signed or caused someone to sign a client's name and then submitted a zero tax form as a claim for refund. In those instances, Defendant FLICKINGER did not place his initials or other notation to indicate that anyone other than client had signed the client's name.

12. When clients of Defendant FLICKINGER received notices from the Internal Revenue Service rejecting their zero returns as frivolous and advising that frivolous return penalties would be assessed if the clients did not correct the frivolous position, Defendant FLICKINGER provided the clients documents to submit to the IRS, or submitted the documents to the IRS on behalf of the clients, containing false and frivolous arguments against the validity of their tax obligations and the entitlement of the IRS to assess such penalties.

Use of the Mails

13. On or shortly before April 15, 2000, with respect to the tax year 1999, and on or before April 15, 2001, with respect to the tax year 2000, Defendant FLICKINGER, in the Northern District of Ohio, Eastern Division, for the purpose of executing and attempting to execute the scheme and artifice to defraud and obtain money, knowingly caused envelopes containing the above-described zero returns he prepared for clients to be placed in any post office

and authorized depository for mail matter, to be sent by the Postal Service to the IRS Service Center in Covington, Kentucky.

14. On or about various dates in 2001, through at least February 2002, Defendant FLICKINGER, in the Northern District of Ohio, Eastern Division, for the purpose of executing and attempting to execute the scheme and artifice to defraud and obtain money, knowingly caused envelopes containing documents from clients in response to IRS notices rejecting their returns as frivolous to be placed in any post office and authorized depository for mail matter, to be sent by the Postal Service to the IRS, including envelopes addressed to an IRS office in Ogden, Utah, dated December 13, 2001, on behalf of a client with the initials "RMK," and dated February 27, 2002, on behalf of a client with the initials "KMH."

All in violation of Title 18, United States Code § 1341.

COUNT 2
(Wire Fraud, 18 U.S.C. § 1343)

The United States Attorney further charges:

The Defendant

1. During all relevant times to this Count, the defendant, JOSEPH W. FLICKINGER, operated a business known as American Financial, located at his residences, initially in Berea, Ohio, and subsequently in North Royalton, Ohio, in Port Clinton, Ohio, in Salt Lake City, Utah, and then from his sister's residence at 4919 Arbormont Rd., Hilliard, Ohio, through which he provided trust and tax preparation and other tax-related and financial services. Defendant FLICKINGER represented himself to the public and his clients to be a tax law, financial and estate planning specialist.

Scheme to Defraud and Obtain Money

2. During the period from approximately 2000 through August, 2004, the exact dates unknown to the United States Attorney, Defendant FLICKINGER devised and intended to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations, as follows.

3. The purpose of the scheme was for Defendant FLICKINGER to defraud both the Internal Revenue Service (IRS) and to defraud and obtain money from clients by inducing and assisting the clients to invest their funds with American Financial under the guise that the funds were "loans" to American Financial, upon which interest would be paid but not reported to the Internal Revenue Service as income by anyone. The manner and means by which the defendant carried out the scheme included but were not limited to the following:

4. Defendant FLICKINGER prepared in many cases what purported to be "Pure Common-Law Family Trusts" for his clients which he falsely represented were not "bound by granting laws, or the whims of lawmakers, regulations and statutes." He then assisted clients in transferring their assets into the name of these so-called "pure" trusts in anticipation of having his clients invest assets held in the name of the trust with him through American Financial.

5. Defendant FLICKINGER falsely told clients that he was investing their monies in "funds" with the following names, when he knew that no such "funds" existed:

(a) American Financial Trust Account

(b) Sidney Fund - Growth Fund

(c) Sydney Fund - Investment Account B

(d) American Financial Hedge Fund

(e) 8% Fund

(f) American Financial Real Estate Investment Trust

Instead of investing his client's monies in these fictitious "funds," FLICKINGER kept all his clients' monies in accounts in the name of American Financial.

6. Defendant FLICKINGER generally had the clients sign Agreements reflecting that their investments with him were actually "loans" which he could invest at his sole discretion, and which had not been solicited by American Financial. Defendant FLICKINGER falsely told clients that "all payments to the client are non-taxable," and that because the program was a "private transaction" or "Private Placement Trust", "there will be no reporting requirement to any person or agency."

7. Defendant FLICKINGER prepared and caused to be prepared and periodically sent to each client false "Client Statements" or "Account Summaries" falsely representing the present value of the clients' "loan/investment" based on the returns their "loan/investment" had purportedly generally achieved or achieved in one of the specific funds mentioned above, and accounting for the payments he had made back to the client.

8. Defendant FLICKINGER prepared and caused to be prepared and periodically sent to clients false performance charts, e.g., showing the performance of the Sidney - Growth Fund as compared to the S&P 500 from January 2000 through December 2001.

9. Defendant FLICKINGER advised clients that they could designate that he pay the proceeds from their loan/investment to any entity and that he would not report it to the Internal Revenue Service or any other person or agency.

10. Defendant FLICKINGER did in fact use a portion of the funds collected to make

payments of purported investments returns and/or interest to his clients, and to persons or entities that they directed, and failed to report to the Internal Revenue Service any return or interest he paid to anyone.

11. During the relevant period of time, Defendant FLICKINGER solicited and induced as many as 34 of his clients to invest their funds with him through American Financial, obtaining over $3.6 million in total, of which he repaid to some of his clients approximately only $700,000.

12. Defendant FLICKINGER used his clients' monies primarily to trade in international currency markets, a highly risky investment, without telling most of the investors that their funds were being put at such a level of risk. FLICKINGER suffered significant losses in his trading activities, spent a great deal of his clients' monies on personal expenses, and also transferred a great deal of the monies to third parties.

13. Defendant FLICKINGER used his clients' funds to pay for personal expenses such as luxury cars for himself (a jaguar and a Hummer), a 2001 Chrylser PT Cruiser for his girlfriend, and real estate, such as a condominium in Norwalk, Ohio. In addition, Defendant FLICKINGER wrote checks to "cash," wrote checks made payable to his girlfriend, and to the son of his girlfriend for a variety of personal purposes, including the purchase of a stretch Hummer limousine, a 2005 Chrysler PT Cruiser, a private plane trip to Antigua, and to substitute cash for his girlfriend's condo as the bond securing his release pending trial in Case No. 2:04-00019 in the Southern District of Ohio.

14. Defendant FLICKINGER also falsely represented to some of his clients, while on release pending trial in the case under Indictment (No. 2:04-CR-00019), that he was associated with an entity called Associated Legal Mediation out of Utah, and directed some of his clients to

wire funds directly to a Bank One account in the name of that entity. These wire transactions were completed at FLICKINGER's direction by the clients with the understanding that the account was controlled by FLICKINGER, when FLICKINGER knew that he had no control or interest in the account. Instead, because FLICKINGER had been indicted in a mail and tax fraud scheme in the Southern District of Ohio, and anticipated going to prison, FLICKINGER had an agreement with the person(s) who operated Associated Legal Mediation for it to take control of his clients' funds in order to keep the funds from the reach of the Internal Revenue Service and/or government.

15. In addition to having some of his clients directly wire their funds to the Associated Legal Mediation account at Bank One, Defendant FLICKINGER personally wired client funds directly from his American Financial accounts to the Associated Legal Mediation Bank One account.

Use of the Wires

16. In or around February, 2004, for the purposes of executing and attempting to execute the scheme and artifice to defraud and obtain money, Defendant FLICKINGER directed a client to wire transmit $659,223.52 from his individual retirement account at National City Bank to FLICKINGER's American Financial account #655677733 at National City Bank, which wire transmittal was completed on February 6, 2004, at which time FLICKINGER also falsely stated to the client that the transfer would not be a taxable withdrawal.

17. In or around July, 2004, in the Southern District of Ohio, for the purposes of executing and attempting to execute the scheme and artifice to defraud and obtain money, Defendant FLICKINGER made efforts to direct a client to wire $232,000 from his Sky Bank

account in the Cleveland, Ohio area to the Associated Legal Mediation account #659835359 at Bank One, which wire transfer was completed on July 22, 2004.

18. In or around August, 2004, in the Southern District of Ohio, for the purposes of executing and attempting to execute the scheme and artifice to defraud and obtain money, Defendant FLICKINGER made efforts to direct a client to wire $50,000 from his National City Bank account in the Cleveland area to the Associated Legal Mediation account #659835359 at Bank One, which wire transfer was completed on August 9, 2004.

19. In or around July, 2004, Defendant FLICKINGER, in the Southern District of Ohio, for the purposes of executing and attempting to execute the scheme and artifice to defraud and obtain money, personally wired $340,000 through six separate wire transfers of his clients' funds from his American Financial accounts maintained at National City Bank (acct. # 655677733) and Zions Bank (acct. #477302186) to the Associated Legal Mediation account #659835359 at Bank One.

20. In or around July 7, 2004, Defendant FLICKINGER, in the Southern District of Ohio, for the purposes of executing and attempting to execute the scheme and artifice to defraud and obtain money, personally wrote a $100,000 check made payable to "cash" from his American Financial bank account at National City Bank (acct: #655677733) which was used to purchase a cashiers check #831755639 made payable to the son of FLICKINGER's girlfriend, which was deposited to the son's Zions Bank account. The funds were then wired on July 8, 2004, at Defendant FLICKINGER's direction, by the son of his girlfriend to the account of FLICKINGER's attorney at Guernsey Bank in the Columbus, Ohio area to be used for purposes personal to FLICKINGER.

All in violation of Title 18, United States Code § 1343.

COUNT 3
FORFEITURE ALLEGATION

JOSEPH W. FLICKINGER

The allegations of Counts Two are realleged and incorporated by reference herein for the purpose of seeking forfeitures pursuant to the provisions of Title 18, United States Code, Section 981 and 28 United States Code, Section 2461(c).

As a result of the foregoing offense in violation of Title 18, United States Code, Sections 1343, defendant JOSEPH W. FLICKINGER shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to such violation.

Property subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) includes, but is not limited to, the following:

i. The remaining balance in the Bank One account # held in the name of Bertha Garback, valued at $49,068.35;

ii. An amount not less than $15,259.61 held by Bertha Garback for Flickinger in her Huntington National Bank;

iii. The remaining balance in the National City Bank account #42250841, held in the name of Joseph Flickinger and Bertha Garback, valued at $15,239.07;

iv. A 2001 Chrysler PT Cruiser, VIN #3C4FY4BB01T304667, Ohio license plate # DBT1790, purchased with proceeds from his scheme to defraud by

FLICKINGER, but registered in the name of his girlfriend, Bertha Garback, and valued at $7060;

v. A 2005 tan Chrysler PT Cruiser, VIN #3C3EY55E65T309888, purchased by the son of FLICKINGER'S girlfriend with proceeds from FLICKINGER'S scheme to defraud, and surrendered to the United States on 2/17/05 in Salt Lake City, with an appraised value of $20,000;

vi. $11,026.56 in cash held by the son of FLICKINGER'S girlfriend, and surrendered to the United States on 2/17/05 in Salt Lake City;

vii. $5,290 in cash seized from FLICKINGER's person upon his arrest on 7/31/04.

4. In addition, the United States moves for the entry of a money judgment against Defendant Flickinger in the amount of $2,598,273.32 representing the remaining amount of criminally derived proceeds in violation of 18 U.S.C. §1343 after taking into consideration the above described assets and funds and funds and assets already recovered from third parties.

Substitute Assets

If any of the property described above as being subject to forfeiture, as a result of the act or omission of a defendant:

(a) cannot be located upon the exercise of due diligence;

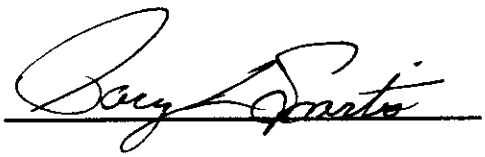
(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek to forfeit any other property of that defendant up to the value of the property listed above.

All in violation of Title 18, United States Code, Section 981.



Gary Spartis, Deputy Criminal Chief
Assistant United States Attorney