

# ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED

CLERK, U.S. DISTRICT COURT  
BY \_\_\_\_\_  
DEPUTY

UNITED STATES OF AMERICA

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v.

NO. 4:03-CR-188-A

Supersedes Indictment Returned  
on 6-19-03 and 8-13-03

RICHARD MICHAEL SIMKANIN

## INDICTMENT

The Grand Jury charges:

At all times material to the indictment:

### Introduction

1. The Internal Revenue Code requires employers to pay to the United States the employer's share of Federal Insurance Contribution Act taxes ("FICA" or social security taxes) and Medicare taxes owing on wages paid to employees.

2. The Internal Revenue Code also requires employers to withhold from the wages of their employees, the employees' share of FICA taxes, Medicare taxes and income taxes, to account for those taxes, and to pay the withheld amounts over to the United States.

3. A person is responsible for collecting, accounting for, and paying over employees' share of FICA, Medicare, and income taxes if he has the authority to exercise

significant control over the employer's financial affairs, regardless of whether the individual exercised such control in fact.

4. A person willfully violates his duty to collect, account for, and pay over FICA, Medicare and income taxes, if he knew of the duty and he voluntarily and intentionally violated that duty.

5. On or about April 5, 1982, Arrow Custom Plastics, Inc. (Arrow) was incorporated in the State of Texas, with its principal place of business in Bedford, Texas. From April of 1982 (when the Company was formed), through and including the dates included in this indictment, Arrow was engaged in the business of the production of customized plastic molds for various manufacturers. At the time of incorporation, through and including the dates included in this indictment, **Richard Michael Simkanin** (**Simkanin** or the defendant) served in the capacity of President and Chief Executive Officer of Arrow.

6. From the date of Arrow's incorporation through approximately September 2001, **Simkanin** was the sole shareholder of Arrow Custom Plastics, Inc. Sometime in August of 2001, **Simkanin** was informed by the government that he must produce Arrow's corporate documents. Shortly after receiving notice to produce these corporate documents, in September of 2001, **Simkanin** caused the dissolution of Arrow Custom Plastics, Inc. From about September 2001 through the dates included in this indictment, **Simkanin** continued to operate and control the business as a sole proprietorship under the name Arrow Custom Plastics (Arrow).

7. **Simkanin** had the authority to exercise significant control over the financial affairs of Arrow. This fact made **Simkanin** responsible for collecting FICA, Medicare and income taxes from the wages of Arrow employees, accounting for those taxes, and paying those taxes over to the United States Treasury (through the IRS).

8. Prior to December 1999, **Simkanin** caused Arrow to withhold, account for, and pay over FICA, Medicare and income taxes from the wages of Arrow employees.

9. In or about December 1999, and again in or about June 2000, **Simkanin** called meetings for Arrow employees and informed them that Arrow would no longer withhold taxes from employee paychecks. **Simkanin** also encouraged employees to file amended tax returns and request refunds of taxes the employees had previously paid.

10. Beginning sometime in or about late 1999 or shortly thereafter, **Simkanin** instructed Arrow's bookkeeper to no longer collect, account for, and pay over taxes from the wages of Arrow employees. On or about November 5, 1999, **Simkanin** told Arrow's accounting firm that effective January 1, 2000, Arrow was no longer going to withhold taxes from the wages of Arrow's employees. On or about November 5, 1999, Arrow's accounting firm advised **Simkanin** against this course of action and sent **Simkanin** a copy of Section 3402, entitled "Requirement of Withholding." As a result of **Simkanin's** decision to not withhold taxes from January 1, 2000 through the present, **Simkanin** was able to retain \$175,032 in taxes that **Simkanin** was obligated to pay as the employer's share of the taxes due.

11. During the period beginning at least 1997 through the present, **Simkanin** took several steps to demonstrate that **Simkanin** did not consider himself subject to the

jurisdiction of the laws of the United States and the State of Texas. During this period, **Simkanin** also challenged the constitutionality of both federal and state laws.

12. To demonstrate that he was not subject to the jurisdiction of the State of Texas, sometime on or before 1997, **Simkanin** surrendered his Texas driver's license to the Texas Department of Motor Vehicles. However, **Simkanin** continued to operate a motor vehicle on the public streets and highways of Texas without a valid driver's license.

13. On or about February 12, 2002, **Simkanin** filed a Notice of Expatriation and Repatriation with the Secretary of the Treasury as part of his effort to demonstrate that he was a stranger to the laws of the United States and no longer subject to the laws of the United States. In this document, **Simkanin** also stated that certain tax laws of the United States violated the Constitution of the United States. In this document, **Simkanin** also stated that he refused to support the present insurgent government and that his only allegiance was to the Texas Republic.

14. On or about February 18, 2002, **Simkanin** signed an affidavit which also stated that he was not a 14th Amendment citizen and was not within the jurisdiction of the corporate United States and its instrumentalities.

15. Beginning on or before August of 2001, **Simkanin** posted a document on his website entitled "Foreign Jurisdiction" in which he stated that the jurisdiction of the United States government is limited to the District of Columbia and military installations.

16. On or about March 2, 2001, **Simkanin** agreed to use his photo in a full page

advertisement in the newspaper USA Today in which the constitutionality of the tax laws of the United States were challenged.

Counts One - Twelve  
Wilful Failure to Collect, Account For, and Pay Over Taxes Due  
(Violation of 26 U.S.C. § 7202)

1. The allegations contained in paragraphs one through sixteen of the Introduction are incorporated herein by reference as though they were fully restated.

2. On or about the dates listed below, in the Fort Worth Division of the Northern District of Texas, **Richard Michael Simkanin**, defendant, did willfully fail to collect, truthfully account for, and pay over to the Internal Revenue Service the federal income taxes, Medicare taxes, and Federal Insurance Contributions Act taxes due and owing to the United States of America from the total taxable wages of Arrow employees for each quarter listed below in Counts 1 through 12 respectively:

<b>Count</b>	<b>Tax Quarter Ending Date</b>	<b>Total Wages Subject to Collection</b>	<b>Total Taxes Not Collected</b>
1	March 31, 2000	\$240,217	\$18,377
2	June 30, 2000	\$234,704	\$17,955
3	September 30, 2000	\$236,928	\$18,125
4	December 31, 2000	\$263,427	\$20,152
5	March 31, 2001	\$233,309	\$17,848
6	June 30, 2001	\$162,197	\$12,408
7	September 30, 2001	\$165,738	\$12,679
8	December 31, 2001	\$177,689	\$13,593
9	March 31, 2002	\$146,217	\$11,186

<b>Count</b>	<b>Tax Quarter Ending Date</b>	<b>Total Wages Subject to Collection</b>	<b>Total Taxes Not Collected</b>
10	June 30, 2002	\$141,907	\$10,856
11	September 30, 2002	\$144,610	\$11,063
12	December 31, 2002	\$141,048	\$10,790
	<b>Total:</b>	<b>\$2,287,991</b>	<b>\$175,032*</b>

**\* of this total amount of taxes due from employees, the employer (Simkanin) was also obligated to pay or match the same amount (\$175,032) which was the employer's 7.65 % share of FICA and Medicare taxes.**

All in violation of Title 26, United States Code, Section 7202.

Counts Thirteen -Twenty Seven  
False Claims Against the United States  
(Violation of 18 U.S.C. § 287)

1. The allegations contained in paragraphs one through sixteen of the Introduction are incorporated herein by reference as though they were fully restated.

2. On or about January 28, 2000, in the Fort Worth Division of the Northern District of Texas, **Richard Michael Simkanin**, defendant, as president of Arrow, did knowingly make and present and cause to be made and presented to the United States Treasury Department, through the Internal Revenue Service, fifteen false claims against the United States, claiming the payment of refunds of the employer's share of FICA taxes and Medicare taxes paid by Arrow, and of the employees' share of FICA taxes, Medicare taxes and income taxes collected from Arrow's employees, covering the period March of 1997 through December of 1999, each of which the defendant knew to be false, fictitious, and fraudulent, for each of Counts 13 through 27 respectively:

<b>Count</b>	<b>Form Submitted</b>	<b>Period Ending</b>	<b>Refund Amount</b>
13	Amended Form 941	3-31-97	\$18,120
14	Amended Form 941	6-30-97	\$17,310
15	Amended Form 941	9-30-97	\$16,517
16	Amended Form 941	12-31-97	\$18,508
17	Amended Form 940-EZ	12-31-97	\$ 2,548
18	Amended Form 941	3-31-98	\$16,295
19	Amended Form 941	6-30-98	\$17,616
20	Amended Form 941	9-30-98	\$18,677

<b>Count</b>	<b>Form Submitted</b>	<b>Period Ending</b>	<b>Refund Amount</b>
21	Amended Form 941	12-31-98	\$19,979
22	Amended Form 940-EZ	12-31-98	\$ 2,291
23	Amended Form 941	3-31-99	\$18,766
24	Amended Form 941	6-30-99	\$19,049
25	Amended Form 941	9-30-99	\$22,829
26	Amended Form 941	12-31-99	\$22,818
27	Amended Form 940-EZ	12-31-99	\$ 3,192

All in violation of Title 18, United States Code, Sections 287 and 2.

Counts Twenty Eight -Thirty One  
Failure to File Individual Income Tax Returns  
(violation of 26 U.S.C. § 7203)

1. The allegations contained in paragraphs one through sixteen of the Introduction are incorporated herein by reference as though they were fully restated.

2. On or about the dates listed below, defendant **Richard Michael Simkanin**, who was married and was a resident of Bedford, Texas, which is a community property state, had and received approximate gross income in the amounts listed below, such amounts computed on the community property basis, and that by reason of such income, the law required the defendant to file a tax return with respect to income, following the close of the below listed calendar years and the below listed filing deadlines, to make such return to the District Director of the Internal Revenue Service for the Internal Revenue District of Dallas, at Dallas, Texas, or to the Director, Internal Revenue Service Center, at Austin, Texas, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well-knowing and believing all the foregoing, the defendant did willfully fail to make said income tax return to the said Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to any other proper office of the United States, for each of Counts 28 through 31 respectively:

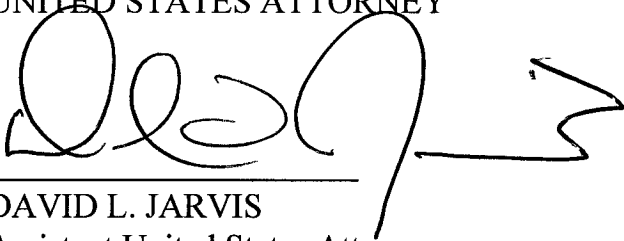
<b>Count</b>	<b>Calendar Year</b>	<b>Filing Deadline</b>	<b>Approximate Gross Income</b>
28	1998	April 15, 1999	\$42,933.00
29	1999	April 17, 2000	\$62,007.00
30	2000	April 16, 2001	\$189,750.00

Count	Calendar Year	Filing Deadline	Approximate Gross Income
31	2001	April 15, 2002	\$115,500.00

All in violation of Title 26, United States Code, Section 7203.

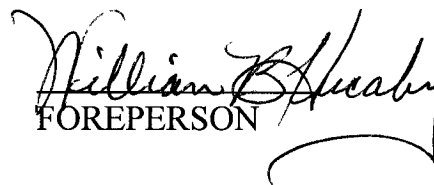
Respectfully submitted,

JANE J. BOYLE  
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A TRUE BILL



FOREPERSON

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

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THE UNITED STATES OF AMERICA

VS.

RICHARD MICHAEL SIMKANIN.

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SECOND SUPERSEDING INDICTMENT

Title 26, United States Code, § 7202  
Title 18, United States Code, § 287 and 2  
Title 26, United States Code, § 7203  
Failure to Appear

(31 COUNTS)

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A true bill,

FORT WORTH

*William B. Healey*  
FOREMAN

Filed in open court this 17th day of December, A.D. 2003.

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*Charles Rail*

CLERK

UNITED STATES MAGISTRATE JUDGE

In Custody