

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2012-CF- 4964

FAHMI ABDALLAH  
5320 Yale Drive  
Franklin, WI 53132

(D.O.B.: September 15, 1952)

Defendant.

SUMMONS

THE STATE OF WISCONSIN TO SAID DEFENDANT:

The Complaint, a copy of which is attached, having been made before me accuses the defendant of the following crimes:

**COUNT 1: THEFT OF SALES TAX PROCEEDS (2006)**

Between January 1, 2006, and December 31, 2006, while doing business at 6201C N. Teutonia Avenue, in the City and County of Milwaukee, State of Wisconsin, the above-named defendant, being required by law to collect Wisconsin sales tax of five percent on the gross receipts from the sales made by said business and to deposit said sales taxes with the State of Wisconsin on a monthly basis and having possession of amounts exceeding \$10,000.00 in sales tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. § 77.60(11), did intentionally fail to pay over those tax monies to the State of Wisconsin at the time required by law, contrary to Wis. Stat. §§ 77.58, 77.60(11), 943.20(1)(b), 943.20(3)(b) (2005-2006).

**COUNT 2: THEFT OF SALES TAX PROCEEDS (2007)**

Between January 1, 2007, and December 31, 2007, while doing business at 6201C N. Teutonia Avenue, in the City and County of Milwaukee, State of Wisconsin, the above-named defendant, being required by law to collect Wisconsin sales tax of five percent on the gross receipts from the sales made by said business and to deposit said sales taxes with the State of Wisconsin on a monthly basis and having possession of

amounts exceeding \$10,000.00 in sales tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. § 77.60(11), did intentionally fail to pay over those tax monies to the State of Wisconsin at the time required by law, contrary to Wis. Stat. §§ 77.58, 77.60(11), 943.20(1)(b), 943.20(3)(b) (2005-2006).

**COUNT 3: THEFT OF SALES TAX PROCEEDS (2008)**

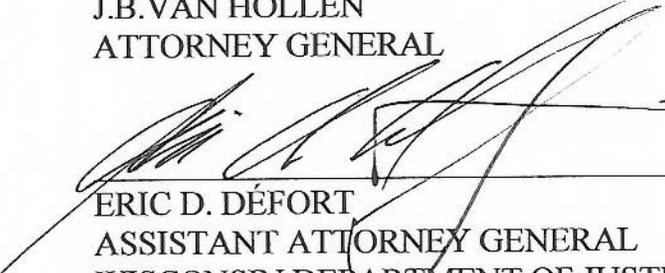
Between January 1, 2008, and December 31, 2008, while doing business at 6201C N. Teutonia Avenue, in the City and County of Milwaukee, State of Wisconsin, the above-named defendant, being required by law to collect Wisconsin sales tax of five percent on the gross receipts from the sales made by said business and to deposit said sales taxes with the State of Wisconsin on a monthly basis and having possession of amounts exceeding \$10,000.00 in sales tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. § 77.60(11), did intentionally fail to pay over those tax monies to the State of Wisconsin at the time required by law, contrary to Wis. Stat. §§ 77.58, 77.60(11), 943.20(1)(b), 943.20(3)(b) (2007-2008).

You, FAHMI ABDALLAH, are, therefore, summoned to appear in Out of Custody Intake Court, in the Circuit Court for the County of Milwaukee located in the Safety Building at 821 W. State Street, Milwaukee, WI 53233, before a Circuit Court Commissioner, to answer said Complaint, on Wednesday, the 24th day of October, 2012, at 1:30 P.M.

**In case you fail to appear, a warrant for your arrest may be issued.**

Dated this 2<sup>nd</sup> day of OCTOBER, 2011.

J.B.VAN HOLLEN  
ATTORNEY GENERAL



ERIC D. DÉFORT  
ASSISTANT ATTORNEY GENERAL  
WISCONSIN DEPARTMENT OF JUSTICE  
Special Prosecutor for the County of Milwaukee  
State Bar No.: 1041760

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857

**ADMISSION OF SERVICE**

I certify and admit that I have received this summons.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Served By: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF WISCONSIN

CIRCUIT COURT

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STATE OF WISCONSIN,

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Case No. 2012-CF- 4964

FAHMI ABDALLAH  
5320 Yale Drive  
Franklin, WI 53132

(D.O.B.: September 15, 1952)

Defendant.

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CRIMINAL COMPLAINT

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Complainant, being duly sworn on oath, states as follows:

**COUNT 1: THEFT OF SALES TAX PROCEEDS (2006)**

Between January 1, 2006, and December 31, 2006, while doing business at 6201C N. Teutonia Avenue, in the City and County of Milwaukee, State of Wisconsin, the above-named defendant, being required by law to collect Wisconsin sales tax of five percent on the gross receipts from the sales made by said businesses and to deposit said sales taxes with the State of Wisconsin on a monthly basis and having possession of amounts exceeding \$10,000.00 in sales tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. § 77.60(11), did intentionally fail to pay over those tax monies to the State of Wisconsin at the time required by law, contrary to Wis. Stat. §§ 77.58, 77.60(11), 943.20(1)(b), 943.20(3)(b) (2005-2006).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

**COUNT 2: THEFT OF SALES TAX PROCEEDS (2007)**

Between January 1, 2007, and December 31, 2007, while doing business at 6201C N. Teutonia Avenue, in the City and County of Milwaukee, State of Wisconsin, the above-named defendant, being required by law to collect Wisconsin sales tax of five percent on the gross receipts from the sales made by said businesses and to deposit said sales taxes with the State of Wisconsin on a monthly basis and having possession of

amounts exceeding \$10,000.00 in sales tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. § 77.60(11), did intentionally fail to pay over those tax monies to the State of Wisconsin at the time required by law, contrary to Wis. Stat. §§ 77.58, 77.60(11), 943.20(1)(b), 943.20(3)(b) (2005-2006).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

### **COUNT 3: THEFT OF SALES TAX PROCEEDS (2008)**

Between January 1, 2008, and December 31, 2008, while doing business at 6201C N. Teutonia Avenue, in the City and County of Milwaukee, State of Wisconsin, the above-named defendant, being required by law to collect Wisconsin sales tax of five percent on the gross receipts from the sales made by said businesses and to deposit said sales taxes with the State of Wisconsin on a monthly basis and having possession of amounts exceeding \$10,000.00 in sales tax monies collected for the above period in trust for the State of Wisconsin pursuant to Wis. Stat. § 77.60(11), did intentionally fail to pay over those tax monies to the State of Wisconsin at the time required by law, contrary to Wis. Stat. §§ 77.58, 77.60(11), 943.20(1)(b), 943.20(3)(b) (2007-2008).

Upon conviction for this offense, a Class G felony, the maximum possible penalty is a fine not to exceed \$25,000 or a term of imprisonment not to exceed 10 years, or both.

### **FACTUAL BASIS**

1. Complainant states that the Wisconsin Department of Revenue (DOR) has employed him for the past 28 years, with the last 24 as a special agent charged with investigating persons suspected of committing tax crimes. Based upon his training and experience, he has familiarized himself with various provisions of the Wisconsin statutes and Wisconsin Administrative Code related to state taxation of individuals and businesses. Complainant is familiar with the methods which legitimate business entities use to comply with their obligations under Wisconsin tax laws. Further, he has been involved in numerous investigations relating to violations of sales tax laws, income tax laws, corporate franchise tax laws, withholding tax laws, and taxes related to sales of tobacco products.

2. **Theft of Sales Tax Proceeds:** Complainant also knows that pursuant to Subchapter III of Chapter 77 of the Wisconsin Statutes, the State of Wisconsin imposes a five percent tax on a business' gross receipts from the sale of goods and services. Pursuant to Wis. Stat. § 77.52(1), the sale of cigarettes and tobacco products is subject to Wisconsin sales tax. Persons making retail sales of such products are required to have a sellers permit issued by the Wisconsin Department of Revenue (DOR) and are required to file sales tax returns known as an ST-12 and remit sales taxes collected on these products. A business must have a separate seller's permit for each location where the business sells goods or services if each is owned by a separate legal entity. If the same legal entity

operates more than one location, the gross sales of all such locations may be combined and reported on one sales tax return. Sales tax returns and sales tax remittances must be filed for each location separately unless the locations are owned by the same legal entity. Further, under § 77.58(1)(a), DOR requires the monthly remittance of sales taxes collected if sales taxes exceed \$600 in any calendar quarter. In each application for the seller's permit, a corporation must estimate its monthly sales tax liability. Further, pursuant to § 77.60(11), whenever a person collects tax moneys imposed under Chapter 77 from a consumer or purchaser, the person receives such tax moneys as trust funds on behalf of the State of Wisconsin. In addition, § 943.20(1)(b) states that a trustee having possession or custody of money who retains possession of such money with intent to convert to his own use is guilty of theft.

3. Complainant states that Madison, Dane County, Wisconsin, is the seat of state government. Further, the Wisconsin Department of Revenue ("DOR") is a state agency and is headquartered within Dane County, State of Wisconsin. All state tax revenues collected and returns filed are ultimately remitted to the DOR. Sales tax returns and payments are posted to the following address: Wisconsin Department of Revenue, PO Box 930389, Milwaukee, WI 53293-0389.

#### **OWNERSHIP AND CONTROL OF BUSINESSES**

4. Complainant knows from his investigation that the above named defendant operates a business known as Home Run Beer & Liquor at 6201C N. Teutonia Ave., City and County of Milwaukee, State of Wisconsin. The complainant knows from his review of Wisconsin Sales and Use Tax Returns filed for the time period in question that the defendant's name is listed on the return as the "legal name."

5. Complainant has also reviewed business records maintained by the Wisconsin Department of Financial Institutions ("DFI"). Those records list the defendant as the registered agent for a business known as Homerun Stores, LLC. The address listed on the record is the defendant's residence at 5320 Yale Drive, City of Franklin, Milwaukee County, Wisconsin. This record reflects that the business was organized in 2003 and that it was administratively dissolved in 2009.

6. The complainant has also reviewed three City of Milwaukee business licenses that were issued to the defendant. The licenses authorize the sale of products at the defendant's North Teutonia Avenue location. The licenses include a retail food license, a Class A malt & Class A liquor license, and a cigarette and tobacco license.

7. The complainant knows from his investigation that the defendant and his wife, Afaf Abdallah, operate another business called Home Run Foods at 3824 W. Florist Avenue, Milwaukee, WI 53209. City of Milwaukee issued business licenses for this location is listed in the name of "Afaf Abdallah." For purposes of the investigation, the

complainant limited his examination to Home Run Beer & Liquor at the Teutonia Ave. location.

### SALES TAX RETURNS

8. Complainant reviewed sales tax returns for Home Run Beer & Liquor for the calendar years 2006, 2007, and 2008. The defendant filed those returns electronically through Stearns CPA Solution. James Stearns confirmed that an employee at his firm prepared these returns. Stearns stated that each month, his firm would receive a one page handwritten worksheet to prepare the returns for the defendant's businesses. The worksheet listed each day of the month and sales for each of those days. During this period, he received these returns through the mail or he picked them up at Home Run Foods. He stated that the writing on the form looked liked the defendant's handwriting but could not be sure. Stearns also reported that he had contact with the defendant regarding the tax returns. For example, in 2006, the defendant informed Stearns that the defendant realized lottery sales were nontaxable and that he had inadvertently included lottery sales in the taxable receipts. Beginning in November, 2006, the monthly worksheets included a column which listed daily lottery sales. Stearns also reported that the defendant's son, Wesam Abdallah, operated the liquor store for a period of time while the defendant spent more time at the food store. However, Stearns stated that he mostly picked up records for both businesses from the defendant. Stearns stated that liquor store sales should have been 100% sales taxable. Stearns reported that two employees worked on this account during this period and used the data on the worksheets to complete and file the monthly sales tax return.

9. Jane Iafelice reported to the complainant that she worked for Stearns CPA Solutions since 1998. Further, she was responsible for the defendant's account beginning in 2007. During this period, when she had questions regarding the account at the liquor store, she spoke with the defendant.

10. Both Stearns and Iafelice report that they were only aware of one bank account held at US Bank for Home Run Beer & Liquor.

11. Complainant also spoke with Wil Bauer and Tom Jobin from J&M Accounting which now provides accounting services for the defendant and his businesses. They report that the defendant is the only person that they contact when they have questions regarding either business.

12. DOR records reflect that Agent Lisa Bonachef was assigned as the collection agent for both the grocery store and liquor store from February, 2005 through June, 2010. Agent Bonachef reported that she always dealt with the defendant for any tax issues regarding either the grocery store or liquor store.

## BANK & ACCOUNTING RECORDS FOR HOME RUN BEER & LIQUOR

13. Based upon the complainant's review of DOR records, the complainant prepared the following table as a summary of the monthly sales tax returns on an annual basis for the years 2006, 2007, 2008. The complainant also compared this with the monthly worksheets that the defendant provided to Stearns Solutions CPA. The 'total sales' reflect the sales reported to Stearns. 'Exempt property' includes items exempt from sales tax including lottery ticket sales and a limited number of food items. 'Sales tax included' is the amount of sales tax obligation reported based on the sales in question. The 'net taxable sales' reflects the amount of sales for which there is an actual obligation to report and pay a sales tax.

Year	TOTAL SALES	Exempt property	sales tax included	net taxable sales
2006	612,127.59	55,241.07	29,674.22	527,212.29
2007	489,597.29	182,130.00	16,399.89	291,066.70
2008	483,702.76	144,068.00	18,227.75	321,407.01

14. Complainant states that he has obtained monthly statements from U.S. Bank for the account at Home Run Beer & Liquor. In addition, he has also examined monthly credit card statements for this business. By combining the monthly deposits at U.S. Bank from cash and checks and the monthly deposits from the credit card statements, he is able to estimate actual revenue generated through this business. Factoring out the non-taxable lottery ticket sales and typical sale of other nontaxable items (which accounted for less than 4% of the business' total sales), the complainant calculated the taxable sales revenue. Using this method, the table reflects that the defendant's taxable sales at this business were significantly greater than the sales information he provided to his tax preparer for monthly sales tax return filings.

Year	Estimated Taxable Sales	Reported Net Taxable Sales
2006	\$993,343.69	\$527,212.29
2007	\$985,961.39	\$291,066.70
2008	\$910,999.65	\$321,407.01

15. The complainant has reviewed the Stearns CPA Solutions accounting records for Home Run Beer and Liquor. These records are in the form of a general ledger

which includes bank statements and which reflects the money used to purchase products for resale for Home Run Beer & Liquor. The complainant has prepared a table showing the total product costs on an annual basis. The table reflects that the cost spent on taxable items for resale is significantly greater than the sales information he provided to his tax preparer for monthly sales tax return filings.

<b>Year</b>	<b>Product Cost of Taxable Items</b>	<b>Reported Net Taxable Sales</b>
<b>2006</b>	\$1,163,444.14	\$527,212.29
<b>2007</b>	\$1,195,344.92	\$291,066.70
<b>2008</b>	\$1,037,810.34	\$321,407.01

16. The complainant states that sales tax returns were filed for the defendant's business (Home Run Beer & Liquor) in October, 2007 and November, 2007. The defendant reported on the monthly worksheet that he provided to Stearns CPA that the business was closed for remodeling. However, in reviewing the revenue information (cash and checking deposits and credit card deposits) for these months, money continued to be deposited in the Home Run Beer & Liquor account in amounts consistent with both prior and subsequent months. In addition, a review of the records for purchases of inventory for resale during October and November 2007 also appear consistent with inventory purchases during the prior and subsequent months. In addition, complainant also reviewed records from Chambers & Owens, a business which sells tobacco products. These records reflect that Chamber & Owens debited the Home Run Beer & Liquor account for cigarette purchases in October and November, 2007. Finally, the Wisconsin State Lottery debited the Home Run Beer & Liquor account for lottery sales during the month of October and November, 2007.

17. The complainant has also reviewed records from the Wisconsin State Lottery Office and compared those with the lottery sales that defendant reported to his accountants and on his sales tax returns. In each year, the defendant overstated the amount of lottery sales. Because lottery sales are not subject to sales tax, the effect of overstating lottery sales is to conceal the sale of taxable items and underreport the amount of sales upon which sales tax is due.

18. Based upon his review of the records of deposits (cash, check, and credit card) into the Home Run Beer & Liquor accounts, the complainant concluded that the defendant improperly failed to remit sales taxes to the state in 2006, 2007, 2008. Further, the amount that he failed to remit and was obligated to pay exceeded \$10,000 in each of those years. The following table summarizes the amount of sales taxes he

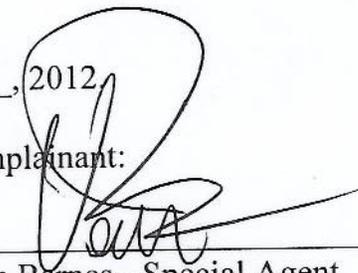
collected on behalf of the State of Wisconsin but failed to remit to the State of Wisconsin as required by law.

Year	Sales Tax Theft
2006	\$26,103
2007	\$38,914
2008	\$33,017

## End of Complaint ##

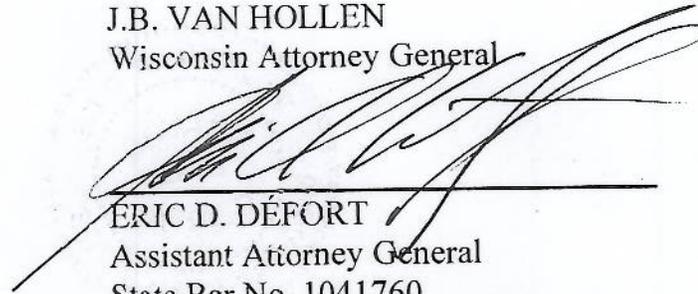
Dated this 1st day of OCTOBER, 2012.

Complainant:

  
Vern Barnes - Special Agent  
Wisconsin Department of Revenue

Subscribed and sworn to before me  
and approved for filing  
this 1st day of October, 2012.

J.B. VAN HOLLEN  
Wisconsin Attorney General

  
ERIC D. DEFORT  
Assistant Attorney General  
State Bar No. 1041760  
Notary Public – Permanent Commission  
Special Prosecutor for Milwaukee County  
Wisconsin Department of Justice  
17 W. Main St., Madison, WI 53707

CLERK OF CIRCUIT COURT  
15 OCT -8 PM 1:11  
NOTARY DIVISION