

**STATEMENT OF**  
**DONALD DANIELS**  
**ASSISTANT UNITED STATES ATTORNEY**  
**WESTERN DISTRICT OF MICHIGAN**

**BEFORE THE**  
**COMMITTEE ON FINANCE**  
**UNITED STATES SENATE**

**APRIL 11, 2002**

Mr. Chairman, Ranking Member Grassley, and Members of the Committee, I am Donald Daniels, an Assistant United States Attorney in the Western District of Michigan. I appreciate the opportunity to appear before you today to discuss the efforts of the Department of Justice to combat unlawful tax schemes. One such scheme is discussed below.

On February 10, 1999, a federal grand jury in the Western District of Michigan returned an indictment against Robert Lewis Spears charging him with three counts of income tax

evasion, in violation of Title 26, United States Code, Section 7201, and with two counts of making false claims against the United States, in violation of Title 18, United States Code, Section 287. According to the indictment, Mr. Spears failed to file income tax returns for the 1993, 1994 and 1995 tax years, notwithstanding the fact that he had taxable income for 1993 of almost \$200,000, with a tax due and owing of approximately \$53,500, that he had a taxable income for 1994 of approximately \$154,000, with a tax due and owing of approximately \$40,600, and that he had a taxable income for 1995 of over \$60,000, with a tax due and owing of approximately \$11,300. Mr. Spears was also charged with making false claims against the United States in that, on or about October 24, 1994, he filed false income tax returns for 1991 and 1992, claiming he was entitled to income tax refunds totaling \$49,924 for 1991 and \$44,129 for 1992.

Mr. Spears was born on July 9, 1936. While Mr. Spears does not have a college degree, the record indicates that he successfully ran his own insurance company for twenty-five years. Mr. Spears obtained insurance licenses in general, property, casualty, life and health insurance. He also held a certified insurance counselor license. Mr. Spears maintained eight separate insurance licenses and represented more than one hundred twenty insurance companies since 1981.

The record of the criminal proceeding reflects the following:

1. Internal Revenue Service (IRS) records for 1986 through 1992 indicate that Mr. Spears filed income tax returns for all of those years. He failed to file returns beginning with the 1993 return. In October 1994, Mr. Spears filed amended 1040X returns for 1991 and 1992 attempting to get a full refund

of the taxes paid for those years. Beginning in 1993, he began to send the IRS correspondence expressing his philosophical opposition to the taxation system of the United States. His failure to file returns, attempt to get refunds of prior tax payments and philosophical correspondence began as he approached retirement and sold his insurance business. At least one witness who knows Mr. Spears stated that he did not express any anti-government or anti-tax philosophies prior to the sale of his business.

2. In fact, the evidence in the record indicates that Mr. Spears conveniently embraced tax protestor philosophies when he was about to retire and would no longer have business expenses to claim as deductions for his returns. He received advice from his prior accountant that his failure to file was ill advised.

3. In addition to failing to file returns and filing false returns, Mr. Spears took affirmative actions in an attempt to hide information about his income and to portray himself as a “non-citizen” and “non-taxpayer.” In January 1993, he formed a non-profit corporation called “The Spears Foundation,” and in June 1993, he filed an Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code in an attempt to get tax-exempt status for that corporation. The IRS denied this request in August 1993. Mr. Spears apparently created the Spears Foundation in an attempt to hide personal assets. In April 1994, and again in February 1995, he filed frivolous tax returns (Form 1120A, U.S. Corporation Short-Form Income Tax Return) on behalf of the Spears Foundation, claiming that the corporation’s income was exempt from taxation.

4. In March 1995, Mr. Spears prepared an IRS Form W-8, Certificate of Foreign Status, and sent it to the person who was buying his insurance business. Attached to the W-8 was a note to the buyer in which Mr. Spears advised the buyer that he (Spears) was a “non-resident alien,” and was exempt from reporting income from the sale of the insurance business. The purpose of IRS Form W-8 is to inform the party paying money to the person in question that there is no need to report the money being paid on an IRS Form 1099, because the payee is not subject to the taxation laws of the United States.

5. Mr. Spears compounded his willful failure to file tax returns by sending various letters to the Internal Revenue Service claiming he was not subject to the laws of the United States, that the Internal Revenue Code was “unconstitutional,” and that he was a “sovereign non-taxpayer.” He also sent the

IRS tax protestor literature notifying the Service that he no longer considered himself subject to the tax code because his “status” had changed to a “non-taxpayer.” Mr. Spears asserted that, as a “non-taxpayer,” he was not subject to the Internal Revenue Code. He also denied the authority of the IRS to act under Title 26 of the United States Code, because the Secretary of the Treasury had (allegedly) not properly delegated that authority to the Service. In January 1995, Mr. Spears returned correspondence from the IRS, in which the Service advised him that his 1992 amended return was “frivolous” and cautioned him of the potential consequences of filing frivolous returns, on which he hand wrote the following: “Our house is not in any federal district or territory, it is in the sovereign state of Michigan.” Mr. Spears also sent letters to the IRS threatening to

file suit if the IRS failed to return monies he claimed the Service illegally collected.

Mr. Spears' conduct in this case was typical of tax protestor cases. Affirmative acts common to tax protestor prosecutions include the filing of false IRS forms, the filing of protest documents, the filing of amended returns for prior years in an attempt to receive a refund of all taxes paid in prior years, the transfer of assets to spouses, relatives, or third parties, and the creation of "non-profit" organizations to conceal ownership of assets from the IRS.

On October 17, 2001, Mr. Spears pled guilty to Count One of the Indictment pursuant to a plea agreement with the government. Count One charged him with income tax evasion for the 1993 tax year. This was the most serious of the charge in the indictment. Pursuant to the plea agreement, Mr. Spears was

required to have tax returns prepared by a certified public accountant for each calendar year from 1993 through 2000 prior to the sentencing hearing, and he agreed to enter into a good faith repayment plan with the IRS. The plea agreement stipulated the tax liability for the tax years 1993, 1994 and 1995 at \$105,577.

Prior to sentencing, Mr. Spears advised the probation department that, while on a 1993 trip to California, he obtained a video titled, "American Institute for Republic," which instructed viewers to contact a man named Al Carter if they had questions or wanted to join the organization. Mr. Spears said he later purchased an "un-taxing kit" from Mr. Carter. In May 1996, after he had been contacted by an IRS criminal investigator, Mr. Spears contacted Mr. Carter for advice. According to Mr. Spears, Mr. Carter advised him to contact a

group in Texas called “Family Advocates,” which gave Mr. Spears the name of Robert Elsey, who was represented to be an attorney knowledgeable regarding tax matters. Mr. Spears retained Mr. Elsey, who represented Mr. Spears during his September 1999 trial of the charges in the indictment, which ended on September 22, 1999, when the Court declared a mistrial, *sua sponte*, finding that Mr. Elsey was providing “ineffective assistance of counsel.” After obtaining different counsel, Mr. Spears elected to plead guilty.

On January 22, 2002, Mr. Spears was sentenced to two years’ probation, with six months of home detention (with electronic monitoring, bearing the cost of \$4.25 per day), 100 hours of community service (to be determined by the Probation Officer), and a fine of \$2,000. As a term of his probation, Mr. Spears is required to cooperate with the IRS in recovering

moneys owed relative to his criminal conduct in this case.

Additional terms of his probation require Mr. Spears to meet with his current attorney and bear the expense of filing a grievance with the Michigan Attorney Grievance Commission against Mr. Elsey for the erroneous legal advice he provided Mr. Spears in this case, and to file a motion with the United States District Court for the Western District of Michigan seeking to preclude Mr. Elsey from practicing before that court, based on that erroneous legal advice, as well as his former counsel's conduct during the truncated trial in September 1999.

It should be noted that Mr. Spears has complied with his obligation to file past due tax returns. On December 6, 2001, he filed his tax returns for years 1993 through 1995, and on December 11, 2001, he filed his tax returns for years 1996

through 2000. These tax returns disclosed tax liabilities totaling approximately \$97,000.

Mr. Chairman, that concludes my prepared remarks. I would be pleased at this time to attempt to answer any questions you or other Members of the Committee may have.