

**FILED**

**MAR 23 2007**

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. AUFFENBERG, Jr.,  
AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,  
PETER G. FAGAN,  
JAMES W. FERGUSON, III,  
J. DAVID JACKSON,  
KAPOK, INC.,  
KAPOK MANAGEMENT, L.P.,  
ST. CLAIR I, LLC,  
ST. CLAIR II HOLDINGS VI, LLC,

Defendants.

)  
)  
) CRIMINAL NO. 07-30042-MJR  
)  
) Offenses:  
) Title 18,  
) United States Code,  
) Sections 371, 1343, and 2,  
)  
) Title 26,  
) United States Code,  
) Sections 7201, 7206(1), and 7206(2)  
)  
) Forfeiture:  
) Title 18,  
) United States Code,  
) Section 981(a)(1)(C)  
)  
) Title 28,  
) United States Code,  
) Section 2461(c)  
)

**INDICTMENT**

**THE GRAND JURY CHARGES:**

**GENERAL ALLEGATIONS**

1. At all times relevant to this Indictment:

**JAMES A. AUFFENBERG, JR.,  
AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,  
PETER G. FAGAN,  
JAMES W. FERGUSON, III,  
J. DAVID JACKSON,  
KAPOK, INC.,  
KAPOK MANAGEMENT, L.P.,  
ST. CLAIR I, LLC, and  
ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, engaged in a scheme to defraud a legitimate economic development program in the United States Virgin Islands and to unlawfully evade taxes by engaging in financial transactions devoid of any economic substance (sham) in order to create the illusion of a management consulting business earning income from services performed within the United States Virgin Islands, rather than within the United States, and thereby evading the assessment and payment of substantial taxes owed to the United States and to the United States Virgin Islands.

2. Defendants **PETER FAGAN** and **JAMES FERGUSON**, as promoters of the scheme, created **KAPOK, INC.**, a U.S. Virgin Islands corporation, and **KAPOK MANAGEMENT, L.P.**, a U.S. Virgin Islands limited partnership. **FAGAN** and **FERGUSON** used these entities, with the help of **J. DAVID JACKSON**, to arrange with wealthy United States taxpayers, like **AUFFENBERG**, for **KAPOK MANAGEMENT** supposedly to run their United States businesses, like **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.**, with the story that the taxpayer, purporting to be both a partner and an employee of **KAPOK MANAGEMENT**, was managing his United States businesses from within the United States Virgin Islands. In fact, nothing of substance changed. **KAPOK MANAGEMENT**'s clients continued to run their United States businesses as they had before, generating income from the conduct of business within the United States. This awkward fiction was created for the purpose of evading United States taxes on that income.

3. Defendant **JAMES A. AUFFENBERG, JR.**, a resident of Swansea, Illinois, generated substantial income through his automobile dealerships and investments in the Southern District of Illinois. **AUFFENBERG** purportedly became an "employee" of **KAPOK MANAGEMENT**, which, through sham contracts with **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.** and **ST. CLAIRE, LLC**, falsely gave the appearance of managing the dealerships

and investments in St. Clair County from within the United States Virgin Islands. **AUFFENBERG** from time to time visited the United States Virgin Islands, but he did not manage his businesses from there in any real way.

4. Defendants **FAGAN, FERGUSON, JACKSON, KAPOK, INC.,** and **KAPOK MANAGEMENT, L.P.** engaged other wealthy United States taxpayers as clients in fraudulent business relationships which lacked economic substance, all of which was done for the purpose of unlawfully evading United States income tax. **AUFFENBERG** recruited one such taxpayer known to the Grand Jury to the scheme and received part of the promoters' cut from that taxpayer's sham transactions.

#### **THE U.S. VIRGIN ISLANDS AND TAXATION**

5. The United States Virgin Islands (USVI) are located in the Atlantic Ocean and the Caribbean Sea about fifty miles east of Puerto Rico. It has been a United States Territory since 1917 and consists of three main islands, St. Croix, St. Thomas, and St. John. Its inhabitants are United States citizens. By the Revised Organic Act of 1954, codified at Title 48, United States Code, Section 1541, *et seq.*, Congress has created a charter for the independent administration of the USVI under an elected Governor and Legislature.

6. "In general, all citizens of the United States, wherever resident, . . . are liable to the income taxes imposed by the [Internal Revenue] Code whether the income is received from sources within or without the United States." Title 26, Code of Federal Regulations, Section 1.1-1(b). The income tax laws in force in the United States are likewise in force in the United States Virgin Islands, except that the proceeds of such taxes are paid into the treasury of the USVI. Title 48, United States Code, Section 1397. The income tax paid to the USVI Bureau of Internal Revenue

(BIR) on the worldwide income of a United States taxpayer who resides in the Virgin Islands is the same income tax that would be paid to the Internal Revenue Service (IRS) if the taxpayer resided in the continental United States. This is called a “mirror” system of taxation.

7. The United States prohibits the USVI from reducing United States income taxes in any way, except for taxes “attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands;” and then only for such an individual who “is a bona fide resident of the Virgin Islands at the close of the taxable year.” Title 26, United States Code, Sections 932 and 934.

8. The USVI legislature enacted a business development program, administered until March 1, 2001, by the Industrial Development Commission (IDC), and thereafter by the Economic Development Commission (EDC). Title 29, Virgin Islands Code, Section 701, et seq. The program was designed to promote the development and diversification of the USVI economy and benefit Virgin Islands inhabitants by establishing and preserving employment opportunities. The USVI established an application process for the program which included written submissions, an oral presentation to the IDC Board, review of the application by the IDC Board in executive session, and submission of recommended applications to the USVI Governor for final approval or rejection.

9. For an approved applicant to the business development program in the category of a designated service business, the IDC entered into a written agreement called a beneficiary certificate. The IDC granted to the certificate holder for a fixed number of years a substantial reduction in United States income tax (IDC/EDC credit) and other local taxes, but only for taxes on income effectively connected with the certificate holder’s conduct of its approved trade or business within the USVI on behalf of clients located outside the USVI (hereinafter referred to as “eligible”

as applied to income, sales, gross receipts, or activity). If the income was not effectively connected with the conduct of the approved trade or business within the USVI or was income from clients located within the USVI, then the income did not qualify for any reduction in United States income taxes or local taxes (“ineligible” income, sales, gross receipts, or activity). IDC beneficiaries were required to file annual and quarterly reports relating to program compliance.

10. Partnerships do not pay United States income taxes directly. The income of a partnership is distributed to its partners, who are liable for income tax on such distributions. For a partnership which holds a beneficiary certificate, the IDC/EDC credit on eligible income flows through to the individual partners along with the distributive share of eligible income. Title 29, Virgin Islands Code, Section 713b(e). In order to lawfully claim the credit, however, the individual partner would also have to be a bona fide resident of the USVI.

11. The terms of the beneficiary certificate gives the IDC/EDC the power to revoke the beneficiary certificate for failure to observe the conditions of the certificate, including any violation of the laws of the United States and the Virgin Islands by the certificate holder, in which case all of the tax benefits would be lost from the date the certificate was first effective.

12. Article IV, Section 3 of the United States Constitution grants Congress ultimate legislative authority over the laws of United States territories, including the Virgin Islands. Congress retains the authority to revoke the ability of the Virgin Islands to encourage economic development by granting reductions in United States income tax on Virgin Islands sourced income.

### THE SCHEME

13. **FAGAN** and **FERGUSON** devised a scheme whereby **KAPOK MANAGEMENT**, by fraud and by materially false statements, representations and promises to conduct a management

consulting business within the USVI, obtained from the IDC, and retained with the EDC, a beneficiary certificate that granted an exemption from local gross receipts taxes and a 90% United States income tax reduction credit to bona fide USVI residents for eligible income derived from eligible activity. **FAGAN** and **FERGUSON** used this beneficiary certificate to carry out the Kapok tax evasion scheme by falsely claiming that funds characterized as “management fees” were earned by eligible activity and resulted in eligible income for **KAPOK MANAGEMENT** and its limited partners. In fact the management fees were a sham. By falsely representing such purported “management fees” as eligible income, **KAPOK MANAGEMENT** caused the USVI to lose substantial gross receipts taxes on receipts retained by **KAPOK MANAGEMENT** and, for any bona fide resident of the USVI, substantial United States income taxes to which the USVI was entitled. **KAPOK MANAGEMENT** in like manner caused the United States to lose substantial taxes which were evaded by United States taxpayers who were not bona fide residents of the USVI.

14. **FAGAN** and **FERGUSON**, individually and as shareholders of **KAPOK, INC.**, profited as promoters of the Kapok tax evasion scheme by selling limited partnerships in IDC beneficiary **KAPOK MANAGEMENT** to wealthy United States taxpayers, as set forth in the following table:

YEAR	NEW PARTNERSHIPS SOLD	TOTAL INITIAL FEES
1999	7	\$ 225,000
2000	31	\$1,275,000
2001	20	\$ 800,000
2002	19	not separately stated
TOTAL	77	\$2,300,000

15. **FAGAN** and **FERGUSON**, individually and as shareholders of **KAPOK, INC.**, as well as **JACKSON**, **AUFFENBERG**, and others, also profited as promoters of the Kapok tax evasion scheme by retaining a percentage of the funds characterized as “management fees,” which were processed through the accounts of **KAPOK MANAGEMENT**. Office expenses net of legitimate business and interest income were also paid out of the purported “management fees,” all as set forth in the chart below:

YEAR	PARTNERS	MANAGEMENT FEES	PROMOTERS' TAKE	OFFICE EXPENSES
1999	9	\$ 8,196,923.10	\$ 409,094.53	\$ 20,301.37
2000	40	\$ 77,190,072.92	\$ 3,699,799.80	\$ 404,085.45
2001	53	\$ 99,967,685.98	\$ 3,772,050.13	\$ 891,407.48
2002	76	\$131,776,488.05	\$ 6,056,698.39	\$1,321,387.69
TOTAL		\$317,131,170.05	\$13,937,642.85	\$2,637,181.99

16. The participants in this scheme unlawfully gained from the evasion of substantial income taxes, not less than the total IDC/EDC tax credits of \$74,125,748.57 taken by sixty-four (64) **KAPOK MANAGEMENT** partners, which greatly exceeded the amounts of tax actually paid into the USVI treasury, as shown below for each of the first four years of the scheme:

YEAR	PARTNERS TAKING CREDIT	IDC/EDC CREDIT TAKEN	TAX PAID TO USVI
1999	10	\$ 2,774,437.00	\$ 1,675,071.00
2000	36	\$22,686,875.00	\$ 5,376,330.00
2001	47	\$28,520,225.57	\$ 6,702,335.32
2002	31	\$20,144,211.00	\$ 4,222,476.27
Total	64	\$74,125,748.57	\$17,976,212.59

## THE DEFENDANTS

17. **PETER G. FAGAN (FAGAN)** is a physician licensed to practice in Texas. **FAGAN** is also a successful businessman who owns and manages a number of Texas companies, including GTT Cattle Group, Fagan Cattle Company, Inc., Comanche Management, LLC, Tejas PSF, Inc., Occucenters I, LP, Mobile First Response, Inc., Organic Residual Reclamation, LLC and others. **FAGAN** resides in De Leon, Texas and is a United States citizen.
18. **JAMES W. FERGUSON, III (FERGUSON)** is a certified public accountant (CPA) licensed to practice in Texas. **FERGUSON** is also a successful businessman who owns and manages a number of Texas companies, including Ferguson Financial, Inc., Ferguson Consulting, Inc., Twin Oaks II, Ltd., TD Group, Ltd. (The Design Group), Ferguson, Jackson, and Rickstrew, a domestic general partnership, as well as various shopping centers and other real estate ventures. **FERGUSON** resides in Plano, Texas and is a United States citizen.
19. **KAPOK, INC. (KAPOK)** is a Subchapter S corporation created on April 21, 1998, under the laws of the USVI. **FAGAN** serves as **KAPOK, INC.**'s President and **FERGUSON** as its Vice-President. A Subchapter S corporation (S corporation) generally is not taxed at the corporate level but its net taxable income passes through to its shareholders. **FAGAN** and **FERGUSON** each own 50% of the stock of **KAPOK, INC.**
20. **KAPOK MANAGEMENT, L.P. (KAPOK MANAGEMENT)** is a limited partnership formed on or about June 1, 1998, by **KAPOK, INC.**, general partner, and **FAGAN** and **FERGUSON**, limited partners, under the laws of the USVI.
21. **J. DAVID JACKSON (JACKSON)** is a CPA licensed to practice in Texas, and in the USVI. **FAGAN** and **FERGUSON** recruited **JACKSON** to be the **KAPOK MANAGEMENT**

Chief Financial Officer and general manager. **JACKSON** owned and operated an accounting business, J. David Jackson, L.C., in Amarillo, Texas. **JACKSON** also was a partner in the accounting firm of Ferguson, Jackson, and Rickstrew, in Amarillo, Texas. **JACKSON** resides in St. Croix, USVI and is a United States citizen.

22. **JAMES A. AUFFENBERG, JR. (AUFFENBERG)** is a businessman who owns a number of automobile dealerships and other businesses located in O'Fallon and Belleville, Illinois. From in or around October 2000 through the end of 2005, **AUFFENBERG** was a **KAPOK MANAGEMENT** limited partner. **AUFFENBERG** resides in Swansea, Illinois and is a United States citizen.

23. **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.** is an S corporation created on October 20, 1987, under the laws of the State of Illinois. Its offices are located at the St. Clair Auto Mall, O'Fallon, Illinois. **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.** held the real estate on which some of **AUFFENBERG**'s dealerships are located, as well as other **AUFFENBERG** investments.

24. **ST. CLAIR I, LLC (ST. CLAIR I)** is a limited liability company (LLC) created by **AUFFENBERG** on or about October 11, 2000, under the laws of the State of Nevada. Its office is located at the St. Clair Auto Mall, O'Fallon, Illinois. **ST. CLAIR I** is a single-member LLC owned by **AUFFENBERG**. An accountant-employee who serves as an internal auditor for **AUFFENBERG**'s companies is an agent of **ST. CLAIR I**. Effective on or about October 11, 2000, **ST. CLAIR I** elected to be treated as a "disregarded entity," that is, as an entity not separate from its single owner for federal tax purposes, on IRS Form 8832.

25. **ST. CLAIR II HOLDINGS VI, LLC (ST. CLAIR II)** is a LLC created by **AUFFENBERG** on or about November 28, 2000, under the laws of the USVI. It has no office in the USVI. Its registered agent is located at 36A-2 and 37A Dronningens Gade, 2<sup>nd</sup> Floor, Charlotte Amalie, St. Thomas, United States Virgin Islands. **ST. CLAIR II** is a single-member LLC owned by **AUFFENBERG**. An accountant-employee who serves as an internal auditor for **AUFFENBERG**'s companies is an agent of **ST. CLAIR II**. On or about December 8, 2000, **AUFFENBERG** signed an IRS Form 8832 in order for **ST. CLAIR II** to elect to be treated as a "disregarded entity," that is, as an entity not separate from its single owner for federal tax purposes.

**OTHER ENTITIES OWNED BY AUFFENBERG AND ST. CLAIR I, LLC**

26. **INTERSTATE MARKETING SERVICE**, a domestic general partnership, was created in the State of Illinois on or about January 1, 1987. It is in the business of selling extended service protection (warranties) and credit life insurance products underwritten by other companies at **AUFFENBERG**'s automobile dealerships.

27. **AUFFENBERG FORD, INC.** was incorporated in the State of Illinois on December 21, 1955. It is an S corporation in the dealership business of sales and service of new and used Ford automobiles, as well as the sale of other used cars. The dealership is located in Belleville, Illinois.

28. **AUFFENBERG HYUNDAI, INC.** was incorporated in the State of Illinois on March 2, 1989. It is an S corporation in the dealership business of sales and service of new and used Hyundai, Subaru, and Volkswagen automobiles, as well as other used automobiles. The dealership is located in O'Fallon, Illinois.

29. AUFFENBERG IMPORTS, INC. was incorporated in the State of Illinois on February 24, 1989. It is an S corporation in the dealership business of sales and service of new and used Mitsubishi automobiles, as well as the sale of other used automobiles. The dealership is located in O'Fallon, Illinois.

30. AUFFENBERG MOTORS OF ILLINOIS, INC. was incorporated in the State of Illinois on March 15, 1989. It is an S corporation in the dealership business of sales and service of new and used Mazda and Suzuki automobiles, as well as the sale of other used automobiles. The dealership is located in O'Fallon, Illinois.

31. AUFFENBERG LINCOLN MERCURY, INC. was incorporated in the State of Illinois, with the name St. Clair Edsel Co., Inc., on July 19, 1957. It is an S corporation in the dealership business of sales and service of new and used Lincoln and Mercury automobiles, as well as other late model used cars. The dealership is located in Belleville, Illinois.

32. AUFFENBERG CHRYSLER-PLYMOUTH, INC. was incorporated in the State of Illinois on February 8, 1996. It is an S corporation in the dealership business of sales and service of new and used Chrysler, Plymouth, Jeep, Nissan, and Kia vehicles, as well as the sale of other used cars. The dealership is located in O'Fallon, Illinois.

33. AUFFENBERG FORD NORTH, INC. was incorporated in the State of Illinois on August 21, 1996. It is an S corporation in the dealership business of sales and service of new and used Ford automobiles, as well as the sale of other used cars. The dealership is located in O'Fallon, Illinois.

**COUNT 1  
CONSPIRACY TO COMMIT AN OFFENSE AND  
TO DEFRAUD THE UNITED STATES  
(18 U.S.C. § 371)**

34. Paragraphs 1 through 33 of the General Allegations of this Indictment are hereby realleged and incorporated by reference.

35. From beginning in and around 1998 and continuing thereafter through the date of this Indictment, the exact dates being unknown to the Grand Jury, in St. Clair County, in the Southern District of Illinois, as well as in the United States Virgin Islands and elsewhere in the United States,

**JAMES A. AUFFENBERG, JR.,  
AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,  
PETER G. FAGAN,  
JAMES W. FERGUSON, III,  
J. DAVID JACKSON,  
KAPOK, INC.,  
KAPOK MANAGEMENT, L.P.,  
ST. CLAIR I, LLC, and  
ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, did knowingly and intentionally combine, conspire, confederate and agree with each other, and with persons both known and unknown to the Grand Jury, first, to commit an offense against the United States, namely, wire fraud, in violation of Title 18, United States Code, Section 1343, and second, to defraud the United States by impeding, impairing, obstructing and defeating the lawful governmental functions of the Treasury Department and the Internal Revenue Service in the ascertainment, computation, assessment, and collection of revenue: namely, United States income taxes, and in the course of this conspiracy one or more of the conspirators did an act to effect the objects of the conspiracy.

**PURPOSE**

36. The purpose of the conspiracy was that the Defendants and their co-conspirators would profit by engaging in a fraudulent scheme to evade United States income taxes, and that the Defendants and co-conspirators who promoted the tax evasion scheme would profit further by selling wealthy United States taxpayers access to and participation in the fraudulent scheme to evade United States income taxes.

**MANNER AND MEANS**

It was part of this conspiracy and scheme to defraud that:

37. Defendants made materially false statements, representations and promises to the representatives of the IDC, and after March 1, 2001, to the representatives of the EDC in order to obtain, and then retain, the IDC beneficiary certificate which granted certain tax reduction benefits for eligible income.

38. Defendants made, and encouraged others to make, materially false statements and representations to representatives of the BIR in order to claim false deductions and false credits which fraudulently reduced the income taxes due and owing to the United States or to the USVI.

39. Defendants engaged in, and encouraged others to engage in, sham financial transactions which included the payment of bogus “management fees” to **KAPOK MANAGEMENT** in order to create the false appearance of eligible income under the IDC beneficiary certificate.

40. **KAPOK MANAGEMENT** did not determine the amount of purported “management fees” which it would charge its “clients,” based upon work it actually performed. Rather, each of its limited partner “clients” calculated the “management fees” sent to **KAPOK MANAGEMENT**

based upon the net taxable income of their own businesses or financial activities of any type, including, for example, net short term gains from the sales of securities (day trading), gains from the one-time sale of real property or a business, and the passive receipt of rents and royalties. The amount of these purported “management fees” was unrelated to any actual services performed within the USVI.

41. Defendants encouraged new limited partners in the year in which each joined **KAPOK MANAGEMENT** to send as purported “management fees” as much net taxable income as possible without regard to whether the income was earned before the limited partner joined **KAPOK MANAGEMENT**. In addition, Defendants regularly backdated agreements, documents, studies, and checks to create the appearance of justification for such a full year’s “management fees.”

42. Defendants encouraged new limited partners to recycle **KAPOK MANAGEMENT** distributions as repeated “management fee” payments for as many cycles as needed in order to maximize the amount that could be claimed as eligible income.

43. Defendants encouraged new **KAPOK MANAGEMENT** limited partners to create and use single-member LLCs, which elected to be treated as disregarded entities for tax purposes in order to avoid attention by the IRS. Defendants also encouraged limited partners to use LLCs in order to create the false appearance of arms-length transactions, and to conceal the self-dealing which actually took place.

44. Defendants ostensibly on paper “hired” limited partners as employees whom they referred to as “senior project managers” of **KAPOK MANAGEMENT**. However, no employer-employee relationship existed. **KAPOK MANAGEMENT** paid a purported “salary” to each senior project manager out of that limited partner’s own funds sent to **KAPOK MANAGEMENT**.

45. Defendants paid for a report titled “Management Fee and Executive Compensation Study” or simply “Management Fee Study” for each conspirator which fraudulently disguised the sham financial transactions with **KAPOK MANAGEMENT** as ordinary and necessary business expenses and as reasonable compensation for services.

46. Defendants employed only a small number of actual USVI residents to perform necessary office work for the execution of the Kapok tax evasion scheme. These employees performed some legitimate business services for various clients of various enterprises. These legitimate services served as a false front for the Kapok tax evasion scheme and were billed separately from “management fees.”

47. Defendants retained various professional advisors to create a false appearance of legitimacy for the Kapok tax evasion scheme.

48. Defendants assisted some co-conspirators to make false claims of USVI residency.

49. Defendants concealed the existence of the conspiracy, took steps designed to prevent disclosure of their activities, and counseled participants in the scheme not to discuss Kapok openly, all to avoid detection of the scheme by the governments of the United States and the United States Virgin Islands.

#### **OVERT ACTS**

50. In furtherance of the conspiracy to commit wire fraud against the USVI and to defraud the United States and its agency, the Internal Revenue Service, and to achieve the objects thereof, one or more of the conspirators committed or caused to be committed, in the Southern District of Illinois and elsewhere, at least one of the following overt acts, among others:

51. On or about May 5, 1998, **KAPOK, INC.**, as general partner, and **FAGAN** and **FERGUSON**, as limited partners, submitted to the IDC an Application for Industrial Development Benefits in the name of **KAPOK MANAGEMENT** as a “Designated Service Business - Management Consulting Services,” as authorized in Title 29, Virgin Islands Code, Section 703(g)(4). The application included **KAPOK MANAGEMENT**’s “Business Plan” which described various services to be performed “all in the USVI.”

52. On or about June 1, 1998, **KAPOK, INC.**, as general partner, and **FAGAN** and **FERGUSON**, as limited partners, executed and caused to be filed with the USVI Lieutenant Governor’s Office an Agreement of Limited Partnership of **KAPOK MANAGEMENT, L.P.**

53. On or about June 4, 1998, **FAGAN** and **FERGUSON** appeared before the IDC Board and described the management consulting and related services to be performed within the USVI for companies located outside the USVI which they falsely promised would constitute the business of **KAPOK MANAGEMENT**.

54. On or about August 1, 1999, **KAPOK, INC.**, as general partner, and **FAGAN** and **FERGUSON**, as limited partners, caused an Amended Agreement of Limited Partnership of **KAPOK MANAGEMENT** to be filed with the USVI Lieutenant Governor’s office. **KAPOK MANAGEMENT** later executed with each new limited partner a Supplemental Partnership Agreement which was not filed with the Lieutenant Governor’s office. This Supplemental Agreement stated the terms by which the general partner would be paid a portion of the “management fees” sent to **KAPOK MANAGEMENT** by the limited partners.

55. On or about September 23, 1999, **KAPOK MANAGEMENT** opened a checking account at Chase Manhattan Bank, with authorized signatories of **FAGAN**, **FERGUSON**, and **JACKSON**. This account was used to return funds to the limited partners.

56. On or about October 9, 1999, **KAPOK MANAGEMENT** opened a savings account at Chase Manhattan Bank, with authorized signatories of **FAGAN**, **FERGUSON**, and **JACKSON**. This account was used to receive funds characterized as “management fees.”

57. On or about November 12, 1999, **KAPOK, INC.** opened a bank account at Chase Manhattan Bank, with authorized signatories of **FAGAN**, **FERGUSON**, and **JACKSON**. This account was used to collect initial fees paid by new limited partners and a portion of the promoters’ cut from “management fees.”

58. On or about December 15, 1999, **FAGAN** purchased the three residential buildings and land at 57 and 58 Estate Boetzberg, also known as “Whispering Palms,” on St. Croix, USVI, which was then temporarily used as the place of business in the USVI for **KAPOK MANAGEMENT**, and served as the USVI physical home address for a number of new **KAPOK MANAGEMENT** limited partners.

59. On or about December 26, 1999, through its attorney, **KAPOK MANAGEMENT** acknowledged the IDC’s letter dated April 29, 1999, advising the approval of **KAPOK MANAGEMENT**’s IDC application by the USVI Governor on March 26, 1999. **KAPOK MANAGEMENT** also notified the IDC that it elected September 1, 1999, as the commencement date for its 90 Percent Income Tax Reduction and 100 Percent Gross Receipts Tax Benefits, and requested from the IDC the signed beneficiary certificate.

60. On or about February 5, 2000, **FERGUSON**, as Vice-President of **KAPOK, INC.**, general partner of **KAPOK MANAGEMENT**, acknowledged in writing receipt of the Rules and Regulations of the IDC and agreed to abide by them.

61. On or about February 15, 2000, **FAGAN**, as President of **KAPOK MANAGEMENT**, accepted and signed the written “Industrial Development Certificate for **KAPOK MANAGEMENT, L.P.** (Beneficiary).”

62. On or about March 21, 2000, for the fourth quarter of 1999, **FERGUSON**, on behalf of **KAPOK MANAGEMENT**, falsely certified under penalties of perjury in an “Affidavit of IDC Beneficiary Regarding Residency of Employees” that the list of beneficiary employees and identification of residency attached to the affidavit was true and complete. In fact, **KAPOK MANAGEMENT** did nothing to verify residency of new limited partners who were called “senior project managers,” but who were not true employees. In the case of the only nonpartner employee listed, **KAPOK MANAGEMENT** did not actually employ him but reported him as an employee without his knowledge or consent.

63. On or about April 1, 2000, **KAPOK MANAGEMENT** subleased office space in the Building #1, William D. Roebuck Industrial Park, Kingshill, Frederiksted District of St. Croix, USVI, which was then used as the place of business in the USVI for **KAPOK MANAGEMENT**.

64. For each year of the Kapok fraud and tax evasion scheme, **JACKSON** caused to be filed with the IDC or EDC a **KAPOK MANAGEMENT** Annual Report, each of which falsely reported Gross Sales and Eligible for Tax Benefits (amounts entirely or mostly comprised of sham “management fees”) and Ineligible Sales, as set forth in the following table:

Filing Date	Year	Gross Sales and Eligible for Tax Benefits	Ineligible Sales
April 7, 2000	1999	\$ 8,196,923	nothing
April 6, 2001	2000	\$ 77,190,073	nothing
April 8, 2002	2001	\$ 100,041,110	nothing
March 28, 2003	2002	\$ 132,042,830	nothing
unknown	2003	\$ 74,038,809	nothing
November 17, 2005	2004	\$ 36,551,085	\$102,846
November 15, 2006	2005	\$ 32,736,534	\$ 41,762

65. For each year of the Kapok fraud and tax evasion scheme, as shown in the following table, **KAPOK MANAGEMENT** filed with the USVI BIR a Form 1065, U.S. Partnership Return of Income, which falsely reported as **KAPOK MANAGEMENT** trade or business income on line 1a, "Gross receipts or sales," and on line 3, "Gross profit," a dollar amount which included primarily sham "management fees," which were not gross receipts or sales or gross profit of any legitimate trade or business conducted by **KAPOK MANAGEMENT**, but were merely part of the circular flow of funds from and to its limited partners.

Date signed	Year	Gross Receipts or Sales Gross Profit
May 19, 2000	1999	\$ 8,421,923
September 17, 2001	2000	\$ 78,482, 265
August 6, 2002	2001	\$ 100,041,110
October 6, 2003	2002	\$ 132,042,830
December 21, 2004	2003	\$ 74,038,809
October 16, 2005	2004	\$ 36,653,929
October 12, 2006	2005	\$ 32,778,296

66. On or about April 12, 2000, **FAGAN**, as President of **KAPOK MANAGEMENT**, in writing acknowledged receipt of the Rules and Regulations of the IDC and agreed to abide by them. **FAGAN** also acknowledged and accepted the completed IDC beneficiary certificate for **KAPOK MANAGEMENT**, and a listing of all reporting forms.

67. On or about April 28, 2000, **KAPOK MANAGEMENT** held its first annual partners' meeting at the Buccaneer Hotel on St. Croix, USVI.

68. On or about May 31, 2000, for the first quarter of 2000, and on dates subsequent for every quarter thereafter through April 29, 2003, for the first quarter of 2003, **JACKSON**, on behalf of **KAPOK MANAGEMENT**, falsely certified under penalties of perjury in documents titled "Affidavit of IDC Beneficiary Regarding Residency of Employees" that the lists of beneficiary employees and identification of residency attached to the affidavits were true and complete. In fact, **KAPOK MANAGEMENT** did nothing to verify residency of new limited partners.

69. On or about March 1, 2001, **FAGAN** sent an email instructing **JACKSON** to not make the **KAPOK MANAGEMENT** invoices to the attention of any of its partners, including himself. **FAGAN** wrote, "That would be a BIG red flag if some local IRS agent was looking at these management fees."

70. On or about April 19- 21, 2001, **KAPOK MANAGEMENT** held its second annual partners' meeting at the Divi Carina Bay Resort on St. Croix, USVI.

71. On or about June 6, 2001, **JACKSON** advised a **KAPOK MANAGEMENT** limited partner by email that he was "recommending to most of the partners to make quarterly estimates even if the amount is small in order to help bolster their residency."

72. On or about March 1 - 3, 2002, **KAPOK MANAGEMENT** held its third annual partners' meeting at the Divi Carina Bay Resort on St. Croix, USVI.

73. On or about July 8, 2002, **JACKSON** sent to a prospective limited partner an email in which he explained, "The money paid to Kapok in the form of Management Fees are credited to your capital account as soon as they hit Kapok. Your capital account after fees is then swept to you along with your salary as soon as the funds are available from the bank, or shortly thereafter. You will be able to use those funds in any way you want."

74. On or about December 4, 2002, **AUFFENBERG** prepared and signed a fraudulent lease for #34 Villa Madeleine Bedroom #Two, Christiansted, St. Croix, Virgin Islands, for the term from December 1, 2002 to December 1, 2003, to a **KAPOK MANAGEMENT** limited partner he recruited. The lease was fraudulent in that **AUFFENBERG** had already leased #34 Villa Madeleine to the United States Coast Guard and did not have legal possession of the property. The limited partner never stayed in the unit.

75. On or about January 19 - 21, 2003, **KAPOK MANAGEMENT** held its fourth annual partners' meeting at the Westin Hotel on St. John, USVI. At this meeting, **JACKSON** accepted a blank signed check number 112238 from the **KAPOK MANAGEMENT** limited partner whom **AUFFENBERG** had referred. **JACKSON** later filled in the check with the date December 31, 2002, and the amount of \$390,000.00 payable to **KAPOK MANAGEMENT**. On or about January 24, 2003, **JACKSON** deposited the check into the account of **KAPOK MANAGEMENT**, but he accounted for it as part of the limited partner's "management fees" for the calendar tax year of 2002.

76. On or about January 25 - 28, 2004, **KAPOK MANAGEMENT** held its fifth annual partners' meeting at the Ritz Carlton Resort at Great Bay, St. Thomas, USVI.

77. On December 16, 2004, **JACKSON** falsely swore before a Special Meeting of the Board of the EDC that he had no knowledge that a **KAPOK MANAGEMENT** limited partner was not a bona fide resident of the USVI and falsely swore that he had no knowledge that **KAPOK MANAGEMENT** facilitated that limited partner's ability to conduct a tax evasion scheme by funneling funds through **KAPOK MANAGEMENT**, then back to him stateside, as if the funds were earned in the USVI.

#### **OVERT ACTS RELATED TO AUFFENBERG'S 2000 YEAR TAX EVASION**

78. On a date unknown, **AUFFENBERG** executed an "Investment Agreement" dated September 29, 2000, signed by **KAPOK, INC.**'s president, **FAGAN**.

79. On a date unknown, **AUFFENBERG** and **FAGAN** executed a fraudulent "Management Agreement" dated September 29, 2000, between **KAPOK MANAGEMENT** and **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.**

80. On or about October 11, 2000, **AUFFENBERG** created **ST. CLAIR I, LLC** under the laws of the State of Nevada.

81. On a date unknown, **AUFFENBERG** and **FAGAN** executed a fraudulent "Management Agreement" dated October 11, 2000, between **KAPOK MANAGEMENT** and **ST. CLAIR I, LLC.**

82. On or about October 16, 2000, **AUFFENBERG** caused to be delivered to **KAPOK MANAGEMENT** a check in the amount of \$50,000 for the limited partner initial fees of \$40,000 and capital contribution of \$10,000.

83. On a date unknown, **AUFFENBERG** entered into a fraudulent Employment Contract dated September 29, 2000 with **KAPOK MANAGEMENT**.

84. On a date unknown, **AUFFENBERG** executed a Limited Partnership Agreement with **KAPOK MANAGEMENT**.

85. On or about November 9, 2000, **AUFFENBERG** executed a Supplemental Agreement to the Limited Partnership Agreement with **KAPOK MANAGEMENT**.

86. On or about November 28, 2000, **AUFFENBERG** created **ST. CLAIR II HOLDINGS VI, LLC** under the laws of the USVI.

87. On a date unknown, at **KAPOK MANAGEMENT**'s direction, **AUFFENBERG** engaged Appraisal Technologies, Inc. (ATI) by letter dated December 20, 2000, to complete a fraudulent Management Fee and Executive Compensation Study, which study was backdated to August 2000 when completed.

88. In or about October 2000, **AUFFENBERG** entered into a fraudulent lease, backdated to July 1, 2000, for Bedroom Number Two of Unit 39 of the Villa Madeleine Condominiums in St. Croix, USVI. The lease was with the **KAPOK MANAGEMENT** limited partner who recruited **AUFFENBERG**. This partner did not actually purchase Unit 39 until December 18, 2000. Even after that date **AUFFENBERG** never stayed in Unit 39.

89. On or about December 8, 2000, **AUFFENBERG** signed a false and misleading affidavit stating that he is a resident of Christiansted, USVI, and that during the period to July 1, 2000 he had been residing in Swansea, Illinois. **AUFFENBERG** caused this false affidavit to be filed with the BIR in order to obtain a Tax Clearance Letter.

90. On or about December 20, 2000, **AUFFENBERG** caused \$2.5 million to be wired from the account of **ST. CLAIR I, LLC** to the account of **KAPOK MANAGEMENT**.

91. On or about December 22, 2000, **KAPOK MANAGEMENT** wired \$2,280,123.26 to the account of **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.** ( **91.20** percent of the \$2,500,000.00 credited as “management fees” for **AUFFENBERG**).

92. On or before January 8, 2001, **AUFFENBERG** made and caused to be delivered to **KAPOK MANAGEMENT** check number 102, dated December 29, 2000, and drawn on the account of **ST. CLAIR I, LLC** payable to **KAPOK MANAGEMENT** in the amount of \$3.2 million.

93. On or about January 16, 2001, **KAPOK MANAGEMENT** wired \$3,079,107.00 to the account of **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.** (**96.22** percent of the \$3,200,000.00 credited as “management fees” for **AUFFENBERG**).

94. Early in 2001, **KAPOK MANAGEMENT** prepared and filed for **AUFFENBERG** a fraudulent Wage and Tax Statement, Form W-2VI, reporting wages in the amount of \$24,000.00. In its books, **KAPOK MANAGEMENT** allocated this entire salary as a direct expense paid out of **AUFFENBERG**'s purported “management fees.” **KAPOK MANAGEMENT** also allocated the employer's share of the Social Security and Medicare payroll taxes (FICA) paid to the Social Security Administration in the amount of \$1,836.00 against **AUFFENBERG**'s “management fees,” because **AUFFENBERG** was not a true employee. In this manner, **KAPOK MANAGEMENT** returned to **AUFFENBERG** a total of \$5,385,066.26 (distributions plus salary expense.) This was **94.47** percent of his 2000 “management fees,” which had totaled \$5,700,000.00 (more than 100% of the net taxable profits from operations and capital gains in the entities purportedly held for all of

2000 by **ST. CLAIR I**, as well as the distributive share from INTERSTATE MARKETING SERVICE purportedly held by **ST. CLAIR I** after September 16, 2000.)

95. On or about May 10, 2001, but made effective as of November 28, 2000, **AUFFENBERG** assigned his partnership interest in **KAPOK MANAGEMENT** to **ST. CLAIR II HOLDINGS VI, LLC**.

96. On or about August 9, 2001, **AUFFENBERG** filed with the Internal Revenue Service, U.S. Return of Partnership Income, Form 1065, for the calendar year 2000 for INTERSTATE MARKETING SERVICE, which return allocated income among partners based on the materially false representation that **ST. CLAIR I, LLC** had acquired **AUFFENBERG**'s partnership interest on September 16, 2000.

97. On or about August 22, 2001, **AUFFENBERG** filed with the IRS, U.S. Income Tax Return for an S Corporation, Form 1120-S, for the calendar year 2000 for **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.**, which allocated income to shareholders based on the materially false representation that **AUFFENBERG** had transferred 100% of his ownership shares to **ST. CLAIR I, LLC** on January 1, 2000.

98. On or about the dates listed below, **AUFFENBERG** signed as President, and then caused to be filed with the IRS, U.S. Income Tax Returns for an S Corporation, Forms 1120-S, for the calendar year 2000, which allocated income to shareholders based on a materially false representation that **AUFFENBERG** had transferred 100% of his ownership shares to **ST. CLAIR I, LLC** on January 1, 2000, for each of the following automobile dealership entities:

August 31, 2001	AUFFENBERG FORD, INC.
August 31, 2001	AUFFENBERG HYUNDAI, INC.
September 11, 2001	AUFFENBERG IMPORTS, INC.
September 11, 2001	AUFFENBERG MOTORS OF ILLINOIS, INC.
September 11, 2001	AUFFENBERG LINCOLN MERCURY, INC.
September 14, 2001	AUFFENBERG CHRYSLER-PLYMOUTH, INC.
September 14, 2001	AUFFENBERG FORD NORTH, INC.

99. On or about November 12, 2001, **AUFFENBERG** signed in St. Clair County, within the Southern District of Illinois, and caused to be filed with the BIR, a materially false U.S. Individual Income Tax Return, Form 1040, for the year 2000.

#### **OVERT ACTS RELATED TO AUFFENBERG'S 2001 YEAR TAX EVASION**

100. On or about May 25, 2001, **AUFFENBERG** and his wife transferred title to their home in Swansea, Illinois from **AUFFENBERG** and his wife jointly, to being owned by his wife alone, who then placed the home in her trust.

101. On or about the dates listed in the following table, **AUFFENBERG** caused to be sent from the account of **ST. CLAIR I** by check or wire to **KAPOK MANAGEMENT** the funds characterized as "management fees" totaling \$11,406,400.00 for the 2001 tax year (more than 100% of the net taxable profits from operations and capital gains in the entities held by **ST. CLAIR I**.) In turn, on or about the dates listed below, **KAPOK MANAGEMENT** caused a substantial percentage of the funds received as "management fees" to be distributed from its accounts to **ST. CLAIR II** and **AUFFENBERG**, which totaled \$10,817,909.18 for the 2001 tax year.

Date Funds Sent	ST. CLAIR I "Management Fees" sent to <b>KAPOK MANAGEMENT</b>	Date Funds Returned	<b>KAPOK MANAGEMENT</b> Distribution sent to <b>ST. CLAIR II</b>	% of Funds Returned
2/6/2001	\$ 68,000.00	2/16/2001	\$ 56,396.13	<b>82.94%</b>
3/5/2001	136,000.00	3/20/2001	55,104.42	<b>81.04%</b>
		4/11/2001	57,028.42	<b>83.87%</b>
4/27/2001	68,000.00	5/8/2001	55,287.60	<b>81.31%</b>
5/29/2001	68,000.00	6/7/2001	54,643.54	<b>80.36%</b>
6/26/2001	68,000.00	7/6/2001	55,950.04	<b>82.28%</b>
7/10/2001	450,000.00	7/13/2001	422,115.23	<b>93.80%</b>
7/23/2001	450,000.00	7/25/2001	425,019.71	<b>94.45%</b>
7/30/2001	450,000.00	7/31/2001	424,913.59	<b>94.43%</b>
8/3/2001	68,000.00			
	450,000.00	8/7/2001	474,206.51	<b>91.55%</b>
8/8/2001	450,000.00	8/10/2001	425,198.64	<b>94.49%</b>
8/15/2001	450,000.00	8/17/2001	427,090.94	<b>94.91%</b>
8/22/2001	425,000.00	8/24/2001	405,681.06	<b>95.45%</b>
8/30/2001	68,000.00	9/7/2001	46,416.74	<b>68.26%</b>
8/30/2001	425,000.00	9/4/2001	403,917.48	<b>95.04%</b>
9/10/2001	405,000.00	9/12/2001	385,690.97	<b>95.23%</b>
9/25/2001	403,400.00	9/27/2001	388,066.76	<b>96.20%</b>
9/25/2001	68,000.00	10/4/2001	42,274.85	<b>62.17%</b>
10/31/2001	68,000.00	11/5/2001	104,872.03	<b>154.22%</b>
11/29/2001	68,000.00	12/5/2001	87,057.94	<b>128.03%</b>
12/18/2001	1,000,000.00	12/20/2001	943,219.38	<b>94.32%</b>
12/21/2001	1,000,000.00	12/24/2001	939,947.65	<b>93.99%</b>
12/26/2001	1,200,000.00	12/27/2001	1,127,961.61	<b>94.00%</b>
12/28/2001	1,500,000.00	12/31/2001	1,441,942.00	<b>96.13%</b>
12/31/2001	1,600,000.00	1/2/2002	1,567,905.94	<b>97.99%</b>
<b>TOTAL</b>	<b>\$11,406,400.00</b>		<b>\$10,817,909.18</b>	<b>94.84%</b>

102. Early in 2002, **KAPOK MANAGEMENT** prepared and filed for **AUFFENBERG** a fraudulent Wage and Tax Statement, Form W-2VI, reporting wages in the amount of \$80,400.00. In its books, **KAPOK MANAGEMENT** allocated this entire salary as a direct expense paid out of **AUFFENBERG**'s purported "management fees." **KAPOK MANAGEMENT** also allocated the

employer's share of the Social Security and Medicare payroll taxes (FICA) paid to the Social Security Administration in the amount of \$6,150.60 against **AUFFENBERG**'s "management fees," because **AUFFENBERG** was not a true employee. In this manner, **KAPOK MANAGEMENT** returned to **AUFFENBERG** a total of \$10,904,459.78 (distributions plus salary expense.) This was **95.60** percent of his 2001 "management fees," which had totaled \$11,406,400.00.

103. On or about October 19, 2001, **AUFFENBERG** purchased Unit 34, Villa Madeleine Condominium, St. Croix, USVI, which he falsely represented to be his place of residence in the USVI, even though shortly thereafter he leased full possession of the condominium to the United States Coast Guard.

104. On or about October 14, 2002, **AUFFENBERG** signed in St. Clair County, within the Southern District of Illinois, and then caused to be filed with the BIR, a materially false U.S. Individual Income Tax Return, Form 1040, for the year 2001.

#### **OVERT ACTS RELATED TO AUFFENBERG'S 2002 YEAR TAX EVASION**

105. On or about the dates listed in the following table, **AUFFENBERG** caused to be sent from the account of **ST. CLAIR I** by check or wire to **KAPOK MANAGEMENT** funds characterized as "management fees" totaling \$7,008,000.00 for the 2002 tax year (more than 100% of the net taxable profits from operations and capital gains in the entities held by **ST. CLAIR I**.) In turn, on or about the dates listed below, **KAPOK MANAGEMENT** caused a substantial percentage of the funds received as "management fees" to be distributed from its accounts to **ST. CLAIR II** and **AUFFENBERG**, which totaled \$6,543,558.92 for the 2002 tax year.

Date Funds Sent	ST. CLAIR I "Management Fees" sent to <b>KAPOK MANAGEMENT</b>	Date Funds Returned	<b>KAPOK MANAGEMENT</b> Distribution sent to <b>ST. CLAIR II</b>	% of Funds Returned
3/1/2002	\$ 90,000.00	3/7/2002	\$ 78,300.92	<b>87.00%</b>
3/6/2002	90,000.00	3/11/2002	82,183.55	<b>91.32%</b>
3/25/2002	90,000.00	4/3/2002	76,338.16	<b>84.82%</b>
4/29/2002	90,000.00	5/2/2002	74,472.56	<b>82.75%</b>
5/30/2002	90,000.00	6/5/2002	78,244.82	<b>86.94%</b>
7/1/2002	90,000.00	7/8/2002	75,388.87	<b>83.77%</b>
7/30/2002	90,000.00	8/2/2002	75,127.81	<b>83.48%</b>
8/30/2002	90,000.00	9/3/2002	74,892.56	<b>83.21%</b>
9/4/2002	500,000.00	9/5/2002	474,300.75	<b>94.86%</b>
9/11/2002	500,000.00	9/12/2002	475,707.60	<b>95.14%</b>
9/17/2002	411,610.00	9/18/2002	392,244.09	<b>95.30%</b>
9/30/2002	90,000.00	10/1/2002	71,776.10	<b>79.75%</b>
10/30/2002	90,000.00	11/1/2002	79,203.29	<b>88.00%</b>
11/29/2002	90,000.00	12/4/2002	88,965.01	<b>98.85%</b>
12/26/2002	2,100,000.00	12/30/2002	1,976,340.74	<b>94.11%</b>
12/31/2002	2,506,390.00	1/16/2003	2,370,072.09	<b>94.56%</b>
	<b>\$ 7,008,000.00</b>		<b>\$ 6,543,558.92</b>	<b>93.37%</b>

106. Early in 2003, **KAPOK MANAGEMENT** prepared and filed for **AUFFENBERG** a fraudulent Wage and Tax Statement, Form W-2VI, reporting wages in the amount of \$84,900.00. In its books, **KAPOK MANAGEMENT** allocated this entire salary as a direct expense paid out of **AUFFENBERG**'s purported "management fees." **KAPOK MANAGEMENT** also allocated the employer's share of the Social Security and Medicare payroll taxes (FICA) paid to the Social Security Administration in the amount of \$6,494.88 against **AUFFENBERG**'s "management fees," because **AUFFENBERG** was not a true employee. In this manner, **KAPOK MANAGEMENT** returned to **AUFFENBERG** a total of \$6,634,953.80 (distributions plus salary expense.) This was **94.68** percent of his 2002 "management fees," which had totaled \$7,008,000.00.

107. On or about October 13, 2003, **AUFFENBERG** signed in St. Clair County, within the Southern District of Illinois, and then caused to be filed with the BIR, a materially false U.S. Individual Income Tax Return, Form 1040, for the year 2002.

**OVERT ACTS RELATED TO THE UNDERCOVER INVESTIGATION**

108. On February 27, 2002, **FERGUSON**, in a telephone conversation with an undercover IRS special agent posing as a financial advisor (the UCA advisor), stated that he should travel to St. Croix to learn about **KAPOK MANAGEMENT**. **FERGUSON** advised he would not send the UCA advisor written information without a confidentiality agreement.

109. On May 8, 2002, **FERGUSON** and **JACKSON** met in the office of **KAPOK MANAGEMENT** with an undercover IRS special agent posing as a wealthy United States taxpayer from Chicago, Illinois (the UCA taxpayer) and his UCA advisor. **FERGUSON** and **JACKSON** advised the UCA taxpayer that the USVI Bureau of Internal Revenue (BIR) was understaffed and much less sophisticated than the IRS. **FERGUSON** and **JACKSON** advised the UCA taxpayer that using a single-member LLC would be required because, “we can’t enter an agreement with you to provide your services back to you.” **FERGUSON** and **JACKSON** also presented a number of documents related to **KAPOK MANAGEMENT** and the possible tax advantages for its limited partners, including:

- a copy of the **KAPOK MANAGEMENT** IDC beneficiary certificate,
- a sample KPMG opinion letter dated December 18, 2000,
- an attorney opinion letter on USVI authority dated August 23, 1999, and
- an attorney memorandum on USVI residency dated October 25, 2000.

**JACKSON** required that the UCA taxpayer sign a Non-Disclosure Agreement before taking the documents from the **KAPOK MANAGEMENT** office.

110. On June 12, 2002, **FAGAN** and **JACKSON** again explained to the UCA taxpayer and his UCA adviser that, by using a single-member LLC, financial transactions with **KAPOK MANAGEMENT** would not be reported to the IRS. **FAGAN** and **JACKSON** stated that **KAPOK MANAGEMENT** would promptly distribute “management fee” funds back to the UCA taxpayer, so that he could recycle the same funds again as additional “management fee” payments.

111. On June 12, 2002, **JACKSON** told the UCA taxpayer to write two checks, one to **KAPOK, INC.** in the amount of \$40,000 for investment fees, and one to **KAPOK MANAGEMENT** in the amount of \$10,000 for partnership investment, and to backdate both checks to May 8, 2002.

112. On August 28, 2002, in a meeting with its attorney, **KAPOK MANAGEMENT** presented the UCA taxpayer as a prospective new limited partner. After the attorney left, **JACKSON** advised the UCA taxpayer that **KAPOK MANAGEMENT** had a different perspective than its attorney and that the attorney did not really understand **KAPOK MANAGEMENT**'s corporate structure. **JACKSON** explained to the UCA taxpayer that, in spite of the attorney's view, the UCA could send in the current year his income of \$3.2 million to **KAPOK MANAGEMENT** so that it would return it back to him as “partnership distributions.”

113. On August 28, 2002, **KAPOK MANAGEMENT** entered into a fraudulent employment contract backdated to May 8, 2002, with the UCA taxpayer.

114. On December 4, 2002, **FAGAN** and **JACKSON** suggested that the UCA taxpayer join a USVI golf club to help with his claim of residency and reminded him to be sure to tell the golf club that he lived in the USVI.

115. On December 4, 2002, **FAGAN** and **JACKSON** advised the UCA taxpayer that, if his net taxable income was determined after the end of the year to be higher than expected, he should then send a check dated December 31, 2002 for additional “management fees” because **JACKSON** would keep the **KAPOK MANAGEMENT** books “open” until the annual meeting in January 2003.

116. On December 4, 2002, **FAGAN** explained to the UCA taxpayer that the purpose of the Management Fee Study was to support ways to get money into **KAPOK MANAGEMENT** in order to maximize the amount of the “management fee.”

117. On December 4, 2002, **JACKSON** counseled the UCA taxpayer on how to respond to challenges to his USVI residency, even though the UCA taxpayer had explained that he had no real residence in the USVI. Despite the UCA taxpayer’s admission, **JACKSON** also told the UCA taxpayer to advise the State of Illinois Department of Revenue that he now resided in the USVI.

118. On December 4, 2002, **JACKSON** told the UCA taxpayer not to respond to letters from the IRS without first contacting **KAPOK MANAGEMENT** and that the UCA taxpayer should not give the IRS a copy of his USVI tax return under any circumstances .

119. On January 20, 2003, **AUFFENBERG** advised the UCA taxpayer that about once a month when **AUFFENBERG** visited the USVI, he would go into the **KAPOK MANAGEMENT** office each morning to find someone with whom to occupy his time (lunch, fishing, dinner) for a few days and then go home.

120. On January 21, 2003, at the fourth annual meeting of **KAPOK MANAGEMENT** limited partners which was held at the Westin Hotel Resort on St. John, USVI, **FERGUSON** and **JACKSON** counseled the limited partners that they should describe themselves as conducting business in the USVI, not in the mainland United States.

121. On January 21, 2003, **FERGUSON** cautioned the limited partners that they should stop being careless in saying that they really live someplace in the mainland United States because, “We can’t open your mouth and make the right words come out.”

122. On January 21, 2003, **JACKSON** instructed the limited partners to tell others that they did not get a tax credit, but that **KAPOK MANAGEMENT** did.

123. Beginning on or about October 17, 2002, and continuing thereafter as outlined in the following table, **KAPOK MANAGEMENT** received from the UCA taxpayer funds falsely characterized as “management fees” and then returned from its accounts a substantial percentage of the funds as **KAPOK MANAGEMENT** distributions or paychecks to the UCA taxpayer in order to create the false appearance of IDC beneficiary eligible income:

Date Funds Sent	UCA "Management Fees" sent to <b>KAPOK MANAGEMENT</b>	Date Funds Returned	<b>KAPOK MANAGEMENT</b> Distribution or paycheck sent to UCA	% of Funds Returned
10/17/2002	\$ 100,000.00	10/24/2002	\$ 55,195.68	
		10/24/2002	25,593.81	<b>80.79%</b>
11/13/2002	150,000.00	11/18/2002	132,019.26	
		11/18/2002	5,118.76	<b>91.43%</b>
12/02/2002	1,000,000.00	12/04/2002	924,807.92	
		12/04/2002	5,118.76	<b>92.99%</b>

12/18/2002	1,200,000.00	12/19/2002	1,113,347.40	
		12/19/2002	5,118.76	<b>93.21%</b>
12/31/2002	200,000.00	01/08/2003	199,234.91	<b>99.62%</b>
<b>TOTAL</b>	<b>\$ 2,650,000.00</b>		<b>\$ 2,465,555.26</b>	<b>93.04%</b>
01/18/2003	150,000.00	01/28/2003	146,030.19	<b>97.47%</b>
03/07/2003	100,000.00	03/12/2003	77,976.07	
		03/12/2003	5,245.37	
		03/12/2003	5,245.37	<b>88.47%</b>
04/03/2003	100,000.00	04/07/2003	85,093.98	
		04/07/2003	5,245.37	<b>90.34%</b>
05/07/2003	100,000.00	05/09/2003	86,867.07	
		05/09/2003	5,245.37	<b>92.12%</b>
<b>TOTAL</b>	<b>\$ 450,000.00</b>		<b>\$ 416,948.79</b>	<b>92.66%</b>

124. Following each such **KAPOK MANAGEMENT** distribution to the UCA taxpayer, **JACKSON** sent a partnership distribution statement, which detailed the accounting by which the amount of the distribution had been determined.

125. On February 21, 2003, well after the purported “management fees” had been sent to **KAPOK MANAGEMENT** by the UCA taxpayer and only after the UCA taxpayer’s specific request, **JACKSON** emailed to the UCA taxpayer six fictitious **KAPOK MANAGEMENT** invoices for “Base Monthly Fees.”

126. From August 19, 2002 and continuing through February 18, 2003, **KAPOK MANAGEMENT** assisted the UCA taxpayer with his purported USVI residency by regularly collecting his mail delivered in the USVI and forwarding it to his actual address in Chicago, Illinois.

**KAPOK MANAGEMENT** regularly contacted the UCA taxpayer by mail, fax, and telephone at his Chicago, Illinois location, and never at his purported USVI address.

127. On March 12, 2003, **JACKSON** advised the UCA taxpayer and another special agent posing as his accountant (UCA accountant) how they should prepare the UCA taxpayer's 2002 Form 1040 tax return.

128. On April 7, 2003, **JACKSON** notified the UCA taxpayer and his UCA accountant that he had reviewed and approved the UCA taxpayer's proposed 2002 Form 1040 tax return.

All in violation of Title 18, United States Code, Sections 371 and 2.

**COUNT 2**  
**TAX EVASION FOR 2000 TAX YEAR**  
**(26 U.S.C. § 7201 and 18 U.S.C. § 2)**

129. Paragraphs 1 through 33 of the General Allegations and paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

130. On or about April 16, 2001, and continuing thereafter through the date of this Indictment, in St. Clair County, within the Southern District of Illinois, and elsewhere,

**JAMES A. AUFFENBERG, JR.,**  
**AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,**  
**PETER G. FAGAN,**  
**JAMES W. FERGUSON, III,**  
**J. DAVID JACKSON,**  
**KAPOK, INC.,**  
**KAPOK MANAGEMENT, L.P.,**  
**ST. CLAIR I, LLC, and**  
**ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, aided and abetted by each other and by others, did willfully attempt to evade and defeat substantial income taxes of approximately \$2,185,394 due and owing by **JAMES A. AUFFENBERG, Jr.**, a resident of Swansea, Illinois, for the calendar year 2000, by failing to make an income tax return on or before April 16, 2001, as required by law, to any proper officer of the IRS and by the affirmative acts pled in paragraphs 78 through 99, and by other means in furtherance of this attempted evasion.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

**COUNT 3**  
**TAX EVASION FOR 2001 TAX YEAR**  
**(26 U.S.C. § 7201 and 18 U.S.C. § 2)**

131. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

132. On or about April 15, 2002, and continuing thereafter through the date of this Indictment, in St. Clair County, within the Southern District of Illinois, and elsewhere,

**JAMES A. AUFFENBERG, JR.,**  
**AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,**  
**PETER G. FAGAN,**  
**JAMES W. FERGUSON, III,**  
**J. DAVID JACKSON,**  
**KAPOK, INC.,**  
**KAPOK MANAGEMENT, L.P.,**  
**ST. CLAIR I, LLC, and**  
**ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, aided and abetted by each other and by others, did willfully attempt to evade and defeat substantial United States income taxes of approximately \$3,774,468, due and owing by **JAMES A. AUFFENBERG, Jr.**, a resident of Swansea, Illinois, for the calendar year 2001, by failing to make an income tax return on or before April 15, 2002, as required by law, to any proper officer of the IRS and by the affirmative acts pled in paragraphs 100 through 104 and by other means in furtherance of this attempted evasion.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

**COUNT 4**  
**TAX EVASION FOR 2002 TAX YEAR**  
**(26 U.S.C. 7201 and 18 U.S.C. § 2)**

133. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

134. On or about April 15, 2003, and continuing thereafter through the date of this Indictment, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR.,**  
**AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,**  
**PETER G. FAGAN,**  
**JAMES W. FERGUSON, III,**  
**J. DAVID JACKSON,**  
**KAPOK, INC.,**  
**KAPOK MANAGEMENT, L.P.,**  
**ST. CLAIR I, LLC, and**  
**ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, aided and abetted by each other and by others, did willfully attempt to evade and defeat substantial United States income taxes of approximately \$2,557,278, due and owing by **JAMES A. AUFFENBERG, Jr.**, a resident of Swansea, Illinois, for the calendar year 2002 by failing to make an income tax return on or before April 15, 2003, as required by law, to any proper officer of the IRS and by the affirmative acts pled in paragraphs 105 through 107, and by other means in furtherance of this attempted evasion.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

**COUNT 5**  
**FALSE FORM 1065 TAX RETURN FOR 2000 TAX YEAR**  
**INTERSTATE MARKETING SERVICE**  
**(26 U.S.C. § 7206)**

135. Paragraphs 1 through 33 of the General Allegations, and paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

136. On or about August 9, 2001, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR.,**

Defendant herein, did willfully make and subscribe a U.S. Return of Partnership Income, Form 1065, for calendar year 2000, for INTERSTATE MARKETING SERVICE, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the IRS, which said return Defendant did not believe to be true and correct as to every material matter in that it stated that 100% of the partnership interest of **AUFFENBERG** was transferred to **ST. CLAIR I, LLC** on September 16, 2000, whereas, as Defendant then and there well knew and believed, **ST. CLAIR I, LLC** did not exist until it was formed under the laws of the State of Nevada on October 11, 2000.

All in violation of Title 26, United States Code, Section 7206(1).

**COUNT 6**  
**FALSE FORM 1120-S TAX RETURN FOR 2000 TAX YEAR**  
**AUFFENBERG ENTERPRISES OF ILLINOIS, INC.**  
**(26 U.S.C. § 7206)**

137. Paragraphs 1 through 33 of the General Allegations, and paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

138. On or about August 22, 2001, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR., and**  
**AUFFENBERG ENTERPRISES OF ILLINOIS, INC.**

Defendants herein, did willfully make and subscribe a U.S. Income Tax Return for an S Corporation, Form 1120-S, for calendar year 2000, for **AUFFENBERG ENTERPRISES OF ILLINOIS, INC.**, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the IRS, which said return Defendants did not believe to be true and correct as to every material matter in that it stated that 100% of the share ownership of **AUFFENBERG** was transferred to **ST. CLAIR I, LLC** on January 1, 2000, whereas, as Defendants then and there well knew and believed, **ST. CLAIR I, LLC** did not exist until it was formed under the laws of the State of Nevada on October 11, 2000.

All in violation of Title 26, United States Code, Section 7206(1).

**COUNT 7**  
**FALSE FORM 1120-S TAX RETURN FOR 2000 TAX YEAR**  
**AUFFENBERG FORD, INC.**  
**(26 U.S.C. § 7206)**

139. Paragraphs 1 through 33 of the General Allegations, and paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

140. On or about August 31, 2001, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR.,**

Defendant herein, did willfully make and subscribe a U.S. Income Tax Return for an S Corporation, Form 1120-S, for calendar year 2000 for AUFFENBERG FORD, INC., which was verified by a written declaration that it was made under the penalties of perjury and was filed with the IRS, which said return Defendant did not believe to be true and correct as to every material matter in that it stated that 100% of the share ownership of AUFFENBERG (who owned 66.81% of the total shares) was transferred to ST. CLAIR I, LLC on January 1, 2000, whereas, as Defendant then and there well knew and believed, ST. CLAIR I, LLC did not exist until it was formed under the laws of the State of Nevada on October 11, 2000.

All in violation of Title 26, United States Code, Section 7206(1).

**COUNTS 8-13**  
**FALSE FORM 1120-S TAX RETURN FOR 2000 TAX YEAR**  
**EACH CORPORATE ENTITY NAMED BELOW**  
**(26 U.S.C. § 7206)**

141. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

142. On or about each date listed in the following table, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR.,**

Defendant herein, did willfully make and subscribe a United States Income Tax Return for an S Corporation, Form 1120-S, for calendar year 2000, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the IRS, which said return Defendant did not believe to be true and correct as to every material matter in that it stated that 100% of the share ownership of **AUFFENBERG** (the sole owner of each corporation) was transferred to **ST. CLAIR I, LLC** on January 1, 2000, whereas, as Defendant then and there well knew and believed, **ST. CLAIR I, LLC** did not exist until it was formed on October 11, 2000.

<b>COUNT 8</b>	August 31, 2001	AUFFENBERG HYUNDAI, INC.
<b>COUNT 9</b>	September 11, 2001	AUFFENBERG IMPORTS, INC.
<b>COUNT 10</b>	September 11, 2001	AUFFENBERG MOTORS OF ILLINOIS, INC.
<b>COUNT 11</b>	September 11, 2001	AUFFENBERG LINCOLN MERCURY, INC.
<b>COUNT 12</b>	September 14, 2001	AUFFENBERG CHRYSLER-PLYMOUTH, INC.
<b>COUNT 13</b>	September 14, 2001	AUFFENBERG FORD NORTH, INC.

All in violation of Title 26, United States Code, Section 7206(1).

**COUNT 14  
FALSE TAX RETURN FOR 2000 TAX YEAR  
(26 U.S.C. § 7206(1))**

143. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

144. On or about November 12, 2001, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR.,**

Defendant herein, did willfully make and subscribe a United States Individual Income Tax Return, Form 1040, for the year 2000, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the BIR, which said return Defendant did not believe to be true and correct as to every material matter in that it stated that he was a bona fide resident of the USVI in the year 2000 and was entitled to a reduction in tax in the amount of \$1,868,014 because his distributive share from **KAPOK MANAGEMENT** was income effectively connected with the conduct of a trade or business within the USVI, whereas, as Defendant then and there well knew and believed, he was not a bona fide resident of the USVI in the year 2000 and was not entitled to a reduction in tax in the amount of \$1,868,014 because his distributive share from **KAPOK MANAGEMENT** was not income effectively connected with the conduct of a trade or business within the USVI.

All in violation of Title 26, United States Code, Section 7206(1).

**COUNT 15**  
**AIDING AND ASSISTING IN A FALSE TAX RETURN FOR 2000 TAX YEAR**  
**(26 U.S.C. § 7206(2))**

145. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

146. From on or about September 30, 2000 and continuing through on or about November 7, 2001, in St. Clair County, Illinois, within the Southern District of Illinois, and elsewhere,

**AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,**  
**PETER G. FAGAN,**  
**JAMES W. FERGUSON, III,**  
**J. DAVID JACKSON,**  
**KAPOK, INC.,**  
**KAPOK MANAGEMENT, L.P.,**  
**ST. CLAIR I, LLC, and**  
**ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the BIR of a United States Individual Income Tax Return, Form 1040, for the year 2000 for **JAMES A. AUFFENBERG, JR.**, which said return was false and fraudulent as to a material matter in that it stated that **AUFFENBERG** was a bona fide resident of the USVI in the year 2000 and was entitled to a reduction in tax in the amount of \$1,868,014 because his distributive share from **KAPOK MANAGEMENT** was income effectively connected with the conduct of a trade or business within the USVI, whereas, as Defendants then and there well knew and believed, **AUFFENBERG** was not a bona fide resident of the USVI in the year 2000 and he was not entitled to a reduction in tax in the amount of \$1,868,014 because his distributive share from **KAPOK**

**MANAGEMENT** was not income effectively connected with the conduct of a trade or business within the USVI.

All in violation of Title 26, United States Code, Section 7206(2).

**COUNT 16**  
**FALSE TAX RETURN FOR 2001 TAX YEAR**  
**(26 U.S.C. § 7206(1))**

147. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

148. On or about October 14, 2002, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR.,**

Defendant herein, did willfully make and subscribe a United States Individual Income Tax Return, Form 1040, for the year 2001, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the BIR, which said return Defendant did not believe to be true and correct as to every material matter in that it stated that he was a bona fide resident of the USVI in the year 2001 and was entitled to a reduction in tax in the amount of \$3,656,149 because his distributive share from **KAPOK MANAGEMENT** was income effectively connected with the conduct of a trade or business within the USVI, whereas, as Defendant then and there well knew and believed, he was not a bona fide resident of the USVI in the year 2001 and was not entitled to a reduction in tax in the amount of \$3,656,149 because his distributive share from **KAPOK MANAGEMENT** was not income effectively connected with the conduct of a trade or business within the USVI.

All in violation of Title 26, United States Code, Section 7206(1).

**COUNT 17**  
**AIDING AND ASSISTING IN A FALSE TAX RETURN FOR 2001 TAX YEAR**  
**(26 U.S.C. § 7206(2))**

149. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

150. From in or around 2001 and continuing through on or about October 10, 2002, in St. Clair County, Illinois, within the Southern District of Illinois, and elsewhere,

**PETER G. FAGAN,**  
**JAMES W. FERGUSON, III,**  
**J. DAVID JACKSON,**  
**KAPOK, INC.,**  
**KAPOK MANAGEMENT, L.P.,**  
**ST. CLAIR I, LLC, and**  
**ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the BIR of a United States Individual Income Tax Return, Form 1040, for the year 2001 for **JAMES A. AUFFENBERG, JR.**, which said return was false and fraudulent as to a material matter in that it stated that **AUFFENBERG** was a bona fide resident of the USVI in the year 2001 and was entitled to a reduction in tax in the amount of \$3,656,149 because his distributive share from **KAPOK MANAGEMENT** was income effectively connected with the conduct of a trade or business within the USVI, whereas, as Defendants then and there well knew and believed, **AUFFENBERG** was not a bona fide resident of the USVI in the year 2001 and he was not entitled to a reduction in tax in the amount of \$3,656,149 because his distributive share from **KAPOK MANAGEMENT** was not income effectively connected with the conduct of a trade or business within the USVI.

All in violation of Title 26, United States Code, Section 7206(2).

**COUNT 18**  
**FALSE TAX RETURN FOR 2002 TAX YEAR**  
**(26 U.S.C. § 7206(1))**

151. Paragraphs 1 through 33 of the General Allegations, paragraphs 34 through 99 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

152. On or about October 13, 2003, in St. Clair County, Illinois, within the Southern District of Illinois,

**JAMES A. AUFFENBERG, JR.,**

Defendant herein, did willfully make and subscribe a United States Individual Income Tax Return, Form 1040, for the year 2002, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the BIR, which said return Defendant did not believe to be true and correct as to every material matter in that it stated that he was a bona fide resident of the USVI in the year 2002 and was entitled to a reduction in tax in the amount of \$2,000,219 because his distributive share from **KAPOK MANAGEMENT** was income effectively connected with the conduct of a trade or business within the USVI, whereas, as Defendant then and there well knew and believed, he was not a bona fide resident of the USVI in the year 2002 and he was not entitled to a reduction in tax in the amount of \$2,000,219 because his distributive share from **KAPOK MANAGEMENT** was not income effectively connected with the conduct of a trade or business within the USVI.

All in violation of Title 26, United States Code, Section 7206(1).

**COUNT 19**  
**AIDING AND ASSISTING IN A FALSE TAX RETURN FOR 2002 TAX YEAR**  
**(26 U.S.C. § 7206(2))**

153. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

154. From in or around 2002 and continuing through on or about October 10, 2003, in St. Clair County, Illinois, within the Southern District of Illinois, and elsewhere,

**PETER G. FAGAN,**  
**JAMES W. FERGUSON, III,**  
**J. DAVID JACKSON,**  
**KAPOK, INC.,**  
**KAPOK MANAGEMENT, L.P.,**  
**ST. CLAIR I, LLC, and**  
**ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the BIR of a United States Individual Income Tax Return, Form 1040, for the year 2002 for **JAMES A. AUFFENBERG, JR.**, which said return was false and fraudulent as to a material matter in that it stated that **AUFFENBERG** was a bona fide resident of the USVI in the year 2002 and was entitled to a reduction in tax in the amount of \$2,000,219 because his distributive share from **KAPOK MANAGEMENT** was income effectively connected with the conduct of a trade or business within the USVI, whereas, as Defendants then and there well knew and believed, **AUFFENBERG** was not a bona fide resident of the USVI in the year 2002 and he was not entitled to a reduction in tax in the amount of \$2,000,219 because his distributive share from **KAPOK MANAGEMENT** was not income effectively connected with the conduct of a trade or business within the USVI.

All in violation of Title 26, United States Code, Section 7206(2).

**COUNT 20  
WIRE FRAUD  
(18 U.S.C. § 1343)**

155. Paragraphs 1 through 33 of the General Allegations, paragraphs 36 through 128 of Count 1 of this Indictment are hereby realleged and incorporated by reference.

156. On or about December 26, 2002, in St. Clair County, Illinois, within the Southern District of Illinois, and elsewhere,

**JAMES A. AUFFENBERG, JR.,  
AUFFENBERG ENTERPRISES OF ILLINOIS, INC.,  
PETER G. FAGAN,  
JAMES W. FERGUSON, III,  
J. DAVID JACKSON,  
KAPOK, INC.,  
KAPOK MANAGEMENT, L.P.,  
ST. CLAIR I, LLC, and  
ST. CLAIR II HOLDINGS VI, LLC,**

Defendants herein, acting together with each other and with persons known and unknown to the Grand Jury, having devised the scheme to defraud the United States Virgin Islands of tax revenue to which it was entitled, by means of materially false and fraudulent statements, representations, and promises, for the purpose of executing such scheme and attempting to do so, did knowingly cause to be transmitted by means of wire or radio communication in interstate and foreign commerce signs and signals, that is, the wire transfer of \$2,100,000.00 from the Union Planters bank account of **ST. CLAIR I, LLC** in St. Clair County, Illinois to the First Bank Virgin Islands savings bank account of **KAPOK MANAGEMENT**, which then on December 30, 2002, issued and deposited into the Virgin Islands bank account of **ST. CLAIR II HOLDINGS VI, LLC** its check number 5756 in the amount of \$ 1,976,340.74, which sum the agent of **ST. CLAIR I, LLC** and

**ST. CLAIR II, LLC** then on the same day deposited by check number 1039 back into the Union Planters bank account of **ST. CLAIR I, LLC** in St. Clair County, Illinois.

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNT 21  
FORFEITURE  
(18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. §2461(c))**

157. The allegations contained in paragraphs 1 - 156 are realleged and incorporated by reference as though fully set forth herein for purposes of alleging forfeitures to the United States pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) as incorporated by Title 28, United States Code, Section 2461(c), within the criminal forfeiture procedures set forth in Title 21, United States Code, Section 853.

158. As a result of the offense described in Count 1 of the Indictment,

**PETER G. FAGAN,  
JAMES W. FERGUSON, III,  
J. DAVID JACKSON,  
KAPOK, INC., and  
KAPOK MANAGEMENT, L.P.,**

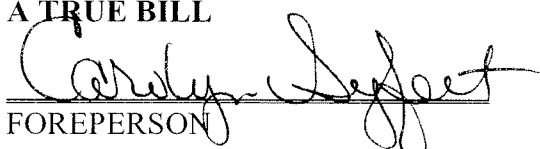
Defendants herein, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), as incorporated by 28 U.S.C. § 2461(c), all property, real and personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1343 or the conspiracy to commit a violation of 18 U.S.C. § 1343. In that said offense involves illegal services, “proceeds” shall include, pursuant to 18 U.S.C. § 981(a)(2)(A), property of any kind obtained directly or indirectly, as the result of the commission of said offense, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense. Said proceeds shall include, but are not limited to, approximately \$16,237,642.85 in United States funds.

159. As a result of the offense described in Count 20 of the Indictment,

**PETER G. FAGAN,  
JAMES W. FERGUSON, III,  
J. DAVID JACKSON,  
KAPOK, INC., and  
KAPOK MANAGEMENT, L.P.,**


Defendants herein, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), as incorporated by 28 U.S.C. § 2461(c), all property, real and personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1343. In that said offense involves illegal services, "proceeds" shall include, pursuant to 18 U.S.C. § 981(a)(2)(A), property of any kind obtained directly or indirectly, as the result of the commission of said offense, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense. Said proceeds shall include, but are not limited to, approximately \$16,237,642.85 in United States funds.

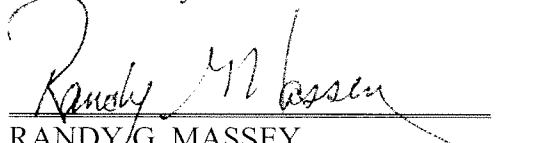
**A TRUE BILL**

  
FOREPERSON



MICHAEL J. QUINLEY  
BRUCE E. REPPERT  
Assistant United States Attorneys

  
GREGORY E. TORTELLA  
United States Department of Justice  
Trial Attorney

  
RANDY G. MASSEY  
Acting United States Attorney

Recommended Bond: \$ 1,000,000, secured by 10% authorized