

III. The Tax Charges

The indictment charges Mr. Smith with tax offenses for allegedly failing to pay taxes on additional compensation he received from the CDC. (ECF 1, Counts 18- 22). The indictment alleges that the CDC did not report this income to the IRS. (*Id.* ¶¶ 33, 38). The CDC also did not accurately report the additional compensation to Mr. Smith, who accurately reported all income that the CDC reported to him.

The CDC had a recurring problem of not accurately reporting to employees – or the IRS – additional compensation that employees received. This was not unique to Mr. Smith. As set forth above, the CDC routinely gave additional compensation to employees, which was not routed through the payroll office, was not disclosed on the CDC's financial statements and, which the CDC did not report to the IRS and did not include on employee W-2 forms. These employees include many of the witnesses in this case, such as Father Wright, Bishop Pilla, and Gerald Arnold, who was responsible for issuing accurate W-2 forms to employees.

In the late 1990's, the IRS performed an audit of the Catholic Universe Bulletin, an affiliate of CDC. The IRS determined that the Catholic Universe Bulletin had consistently failed to report additional income paid to individuals and entities similar to the income described above. Gerald Arnold was responsible for tax reporting for the CDC and its affiliates, including the Catholic Universe Bulletin. We request the IRS findings which establish the pattern of the CDC failing to accurately report to the IRS and individuals the additional income they received.

The indictment alleges that Bishop Pilla determined Mr. Smith's compensation after he became Chief Financial and Legal Officer in 2000. (ECF 1, ¶¶ 6-7). His knowledge and credibility will be at issue. There is an account at McDonald & Co. entitled the Anthony M. Pilla Charitable Account with assets in excess of \$500,000. It is account number 70009101. It alternates between using the CDC's tax I.D. number and Bishop Pilla's tax I.D. It has never

appeared on the CDC's books and records. Bishop Pilla withdrew money from the account for his own use in a manner designed to conceal the transactions and his use of the funds.¹¹ After the indictment issued in this case, Bishop Pilla resigned and filed amended tax returns which account for some of the activity in this account. We request all documentation regarding the account, including the source of funds deposited into this account and all activity regarding this account recorded on the CDC's books and records.

On May 2, 2002, Bishop Pilla wrote a check from this account, which was then using the CDC tax I.D., made payable to cash in the amount of \$180,000, which was deposited at the CDC. We request the documents which show where the funds were deposited and how they were treated on the CDC's financial records.

In September, 1991, Bishop Pilla caused two checks to be written on this account in the amounts of \$29,019.57 and \$56,806.04. The CDC then issued a check to First Federal Savings Bank to purchase a money order payable to Bishop Pilla in the same amount.¹² We request the CDC records which show: (1) where the two checks were deposited; (2) how they were accounted for on the CDC's records; and (3) how the purchase of the money order was accounted for on the CDC's records.

In addition, we request the check vouchers, invoices and all other documentation regarding the following transactions involving additional compensation to Bishop Pilla:

<u>Payee</u>	<u>Check Number</u>	<u>Date</u>	<u>Amount</u>
Ivanhoe Furniture	409	2/3/1997	\$16,369.64
Ivanhoe Furniture	901	4/18/1997	\$19,451.81
Ivanhoe Furniture	2198	7/31/1997	\$42,939.50
Cash	479	2/3/1997	\$ 1,000.00
Cash	327	2/3/1997	\$ 300.00
Cash	890	4/18/1997	\$ 160.00

¹¹ For example, checks were written from this account to a bank to purchase a money order.

¹² A copy of the money order is attached as Exhibit F.

Cash	188	4/24/1997	\$ 300.00
Cash	192	4/24/1997	\$ 1,475.00
Cash	955	5/15/1997	\$ 300.00
Cash	3615	2/27/1998	\$ 300.00
Cash	3669	3/11/1998	\$ 500.00
Cash	3787	3/31/1998	\$ 579.00
Cash	4861	9/18/1998	\$ 93.82
Cash	5171	11/1/1998	\$ 119.79
Cash	5322	12/1/1998	\$ 377.05
Cash	6078	3/15/1999	\$ 340.17
Cash	6263	4/15/1999	\$ 579.00
Cash	6672	6/30/1999	\$ 42.36
Cash	7357	10/1/1999	\$ 111.88
Cash	10701	4/12/2000	\$ 2,000.00
Cash	12324	6/23/2000	\$ 100.00
Cash	12619	6/30/2000	\$ 369.82
Cash	12630	7/3/2000	\$ 380.30
Cash	14413	9/29/2000	\$ 589.00
Cash	14586	10/6/2000	\$ 358.00
Cash	14669	10/13/2000	\$ 100.00
Cash	15599	11/16/2000	\$ 530.82
Cash	16065	12/8/2000	\$ 823.05
Cash	19692	5/4/2001	\$ 196.80
Cash	24921	11/30/2001	\$ 300.00
Cash	25326	12/14/2001	\$ 238.00
Bishop Pilla	36966	9/23/1997	\$ 200.00

IV. Internal Investigation

The indictment is based upon a selective investigation performed by the CDC. As part of its investigation, the CDC hired lawyers and accountants to interview witnesses and review documents. Based on its investigation, the CDC submitted a claim to its insurance company, which it provided to the government and to defense counsel.¹³ The indictment mirrors the claim submitted by the CDC to its insurance carrier.¹⁴

¹³ Attached as Ex. G.

¹⁴ Compare Ex. G, Insurance Claim, Attachment C, ¶ 8 (“When questioned in late 2003, Smith misrepresented to the Diocesan Finance Council the total amount of fees paid to the Zgoznik Entities.”) with ECF 1, ¶ 28 (“During 2003, SMITH misled the Diocesan Financial Advisory Council by misrepresenting the amount paid by the Diocese to the Zgoznik Entities for outsourced services.”) Also compare Ex. G, Attachment C ¶¶ 7 and 7a (Mr. Smith “either retained Zgoznik Entities, recommended that other Diocese-affiliated entities retain Zgoznik Entities or otherwise influenced the retention of Zgoznik Entities” and further “Smith urged, and in some instances forced, other Secretariats (such as the Office of Catholic Education) to use Zgoznik Entities and Smith approved the charges.”) with ECF 1, p. 7, ¶ 17 (“SMITH caused and induced certain offices and departments of the Diocese and certain of its