

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA
:
- v. -
:
HERBERT LINDENBAUM,
:
Defendant.
:
----- x

**SEALED
INDICTMENT**

17 CRIM 106

COUNT ONE
(Evasion of Payment of Income Taxes)

Introduction

1. At all times relevant to this Indictment, HERBERT LINDENBAUM, the defendant, was a resident of New York, New York, and worked as a personal injury and medical malpractice lawyer in New York, New York.

2. HERBERT LINDENBAUM, the defendant, was a partner in a law firm ("Law Firm-1") from at least in or about 1999 through in or about July 2008 when Law Firm-1 dissolved. From at least in or about July 2008 through in or about February 2017, LINDENBAUM has worked as a sole practitioner in New York, New York, using the firm name Herbert G. Lindenbaum, PLLC.

LINDENBAUM's Tax Liabilities

3. For tax years 1999 through 2013, HERBERT LINDENBAUM, the defendant, reported on his U.S. Individual Income Tax Returns,

Forms 1040 a total tax due of \$2,531,150. For the same 15-year period, LINDENBAUM paid only \$85,000 in taxes voluntarily, and the Internal Revenue Service ("IRS") collected an additional \$129,323 from LINDENBAUM in involuntary levies. As a result, LINDENBAUM's unpaid tax liabilities for the tax years 1999 through 2013, based on his own reporting, totaled \$2,316,827. Factoring in penalties, fees, and interest that were assessed by the IRS at the time that LINDENBAUM filed his Forms 1040 without paying his tax liabilities, LINDENBAUM's total unpaid tax liabilities increase to \$3,392,211.

LINDENBAUM's Scheme to Evade Payment of Taxes

4. Beginning in or about 1999, and continuing through in or about February 2017, in anticipation of having to pay taxes that were assessed by the IRS, HERBERT LINDENBAUM, the defendant, executed a scheme designed to evade payment of personal income taxes that he owed for the tax years 1999 through 2013. As further described below, LINDENBAUM used various means to evade payment of those taxes, by concealing and attempting to conceal from the IRS the nature and extent of his income and assets, including, among others: (a) directing income and assets to be paid into nominee bank accounts for the purpose of concealing and attempting to conceal his true and correct income and assets; (b) diverting business income to pay various personal expenses to create the

appearance that LINDENBAUM and his business had little or no income; (c) paying his son and wife from business assets to further create the appearance that LINDENBAUM's business had little or no income; (d) cashing checks made out to himself so that the IRS could not access those monies by levying his bank accounts or otherwise; and (e) opening new bank accounts following IRS levies to avoid making involuntary payments to the IRS.

A. LINDENBAUM's Use of Nominee Bank Accounts to Conceal Income and Assets

5. Between in or about 2006 and in or about 2011, HERBERT LINDENBAUM, the defendant, earned income as a result of legal services he performed for certain clients. In order to hide from the IRS his receipt of certain of that income, and to evade paying taxes that were due and owing, LINDENBAUM caused checks made out to him to be deposited not in his business or personal bank accounts but, instead, in the personal bank accounts of LINDENBAUM's wife.

6. Among the items of income that HERBERT LINDENBAUM, the defendant, earned through Herbert G. Lindenbaum, PLLC but which he caused to be directed to the accounts of his wife were the following:

a. From in or about February 2010 through on or about August 4, 2011, LINDENBAUM received checks made out to him from

other law firms totaling approximately \$38,358. LINDENBAUM caused those checks to be deposited into the bank account of his wife.

b. From in or about September 2010 through in or about May 2011, LINDENBAUM received approximately \$70,500 in advance payments for anticipated fees. LINDENBAUM caused checks made out to him for those anticipated fees to be deposited into the bank account of his wife.

B. LINDENBAUM's Use of Business Accounts to Conceal Income and Assets

7. HERBERT LINDENBAUM, the defendant, used at least four business bank accounts during the times relevant to the Indictment: (1) the Herbert G. Lindenbaum, PLLC Attorney Operating Account; (2) the Herbert G. Lindenbaum, PLLC IOLA/Escrow Account; (3) the H.G. Lindenbaum, PC IOLA Trust Account #2; and (4) the Law Firm-1 Attorney Operating Account (collectively, "the Business Accounts"). An IOLA account, which stands for Interest on Lawyer Account, is required to be used only for client funds under New York law.

8. From in or about 2006 through in or about 2011, in order to conceal from the IRS that he had substantial assets and cash available for his personal use, and to evade paying taxes that were due and owing, HERBERT LINDENBAUM, the defendant, paid certain of his personal expenses directly from the Business Accounts.

9. Among the personal expenses that HERBERT LINDENBAUM, the defendant, paid directly from the Business Accounts were the following:

a. From in or about 2006 through on or about August 6, 2010, LINDENBAUM caused approximately \$89,000 in alimony payments to his ex-wife to be made from the Business Accounts;

b. From on or about May 20, 2008 through on or about May 16, 2010, LINDENBAUM caused approximately \$77,087 in personal loan repayments to three creditors to be made from the Business Accounts;

c. From in or about January 2007 through on or about July 19, 2010, LINDENBAUM caused approximately \$428,113 in apartment rental and utility payments for his personal apartment located in New York, New York to be made from the Business Accounts;

d. From on or about July 21, 2008 through on or about August 3, 2010, LINDENBAUM caused approximately \$29,825 in car payments and parking garage rental payments for his personal luxury car to be made from the Business Accounts;

e. From on or about April 13, 2008 through on or about March 2, 2011, LINDENBAUM caused approximately \$51,564 in payments for his children's tuition, school loans, and other expenses to be

made from the Business Accounts; and

f. From on or about February 15, 2008 through on or about June 14, 2010, LINDENBAUM caused approximately \$10,588 in personal medical expenses to be paid from the Business Accounts.

C. LINDENBAUM's Payments to His Family to Conceal Income and Assets

10. From in or about 2007 through in or about 2010, in order to conceal from the IRS that he had substantial assets and cash available for his personal use, and to evade paying taxes that were due and owing, HERBERT LINDENBAUM, the defendant, caused his son to be placed on the payroll of Law Firm-1 and Herbert G. Lindenbaum, PLLC and caused both law firms to report to the IRS that they paid his son wages of approximately \$23,984 in that time period. In truth and in fact, however, LINDENBAUM's son lived in California during that time period and was never employed by Law Firm-1 or Herbert G. Lindenbaum, PLLC in any capacity.

11. From on or about June 28, 2006 through on or about November 23, 2010, in order to conceal from the IRS that he had substantial assets and cash available for his personal use, and to evade paying taxes that were due and owing, HERBERT LINDENBAUM, the defendant, caused payments to be made to his wife of approximately \$119,608.84 from the Business Accounts. While LINDENBAUM claimed that his wife worked for Law Firm-1 and Herbert

G. Lindenbaum, PLLC during this period, she received separate wage payments from a separate payroll account during this period totaling approximately \$160,001, the majority of which (approximately \$149,997) was reported on W-2 Forms filed with the IRS by Law Firm-1 and Herbert G. Lindenbaum, PLLC. The separate amount of approximately \$119,608.84 paid to LINDENBAUM's wife was not reported to the IRS as having been for wages.

D. LINDENBAUM's Cashing of Business Income to Protect it From the IRS

12. From on or about January 3, 2007 through on or about December 9, 2011, in order to evade paying taxes that were due and owing via tax levy or otherwise, HERBERT LINDENBAUM, the defendant, cashed checks totaling approximately \$326,422 made payable to himself from the Business Accounts.

E. LINDENBAUM's Efforts to Avoid IRS Levies

13. In an effort to satisfy the back tax liabilities of HERBERT LINDENBAUM, the defendant, the IRS levied one of the Business Accounts and a payroll account associated with both Law Firm-1 and Herbert G. Lindenbaum, PLLC on or about September 1, 2010. Thereafter, LINDENBAUM opened two personal bank accounts, one on or about September 21, 2010 and the other on or about June 13, 2011 ("the Personal Accounts"). From on or about September 21, 2010 through on or about November 18, 2011, in order to evade

involuntary payments to the IRS of taxes that were due and owing via accounts that had been levied by the IRS, LINDENBAUM deposited approximately \$161,140 in business receipts into the Personal Accounts.

Statutory Allegations

14. From in or about 1999, through in or about February 2017, in the Southern District of New York and elsewhere, HERBERT LINDENBAUM, the defendant, willfully and knowingly did attempt to evade and defeat the payment of a substantial part of the income tax due and owing by LINDENBAUM to the United States of America for the calendar years 1999 through 2013, by various means, including, among other things, concealing and attempting to conceal from the IRS the nature and extent of his income and assets by: (a) directing income into bank accounts of his wife; (b) directing income to be paid into the business accounts of his law firm, and thereafter directing that income to be used to pay for his personal expenses; (c) paying his son and wife for work they did not perform for Law Firm-1 or Herbert G. Lindenbaum, PLLC; (d) cashing checks made out to himself from the business accounts of his law firms to avoid IRS access to those monies; and (e) opening new personal bank accounts after IRS levies to avoid making involuntary payments to the IRS.

(Title 26, United States Code, Section 7201.)

COUNTS TWO THROUGH FIVE

(Failure to Pay Tax —2010-2013 Tax Years)

The Grand Jury further charges:

15. The allegations contained in paragraphs 1 through 13 of this Indictment are repeated and realleged as though fully set forth herein.

16. On or about the dates set forth below, in the Southern District of New York, HERBERT LINDENBAUM, the defendant, willfully and knowingly did fail to pay, at the time and times required by law and regulation, the income tax due for the calendar years stated below, in the amounts set forth below, to the District Director of the Internal Revenue Service for the Internal Revenue District of Manhattan, or to the Director, Internal Revenue Service Center, Holtsville, New York, or to any other proper officer of the United States, whereas, as LINDENBAUM then and there well knew and believed, he had taxable income in excess of \$100,000 for each of such years, on which taxable income there was due and owing to the United States of America an income tax in the amounts set forth below, which income tax LINDENBAUM was required to pay, at the time and times required by law and regulation, to the District Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to said proper officers:

COUNT	TAX YEAR	PAYMENT DEADLINE	AMOUNTS DUE TO IRS
2	2010	04/16/11	\$227,585, including \$2,348 in penalties and fees and \$22,890 in interest assessed at filing
3	2011	04/16/12	\$57,919, including \$4,175 in interest assessed at filing
4	2012	04/16/13	\$142,510, including \$31,881 in penalties and fees and \$4,357 in interest assessed at filing
5	2013	04/16/14	\$142,752, including \$37,045 in penalties and fees and \$4,438 in interest assessed at filing

(Title 26, United States Code, Section 7203.)

COUNT SIX

(Obstructing and Impeding the Due Administration
of the Internal Revenue Laws)

The Grand Jury further charges:

17. The allegations in paragraphs 1 through 13 of this Indictment are repeated and realleged as though fully set forth herein.

18. From in or about 1999, through in or about February 2017, in the Southern District of New York and elsewhere, HERBERT LINDENBAUM, the defendant, did corruptly obstruct and impede, and

endeavor to obstruct and impede, as set forth above, the due administration of the Internal Revenue Laws. .

(Title 26, United States Code, Section 7212(a).)



FOREPERSON

2/15/17

Preet Bharara

PREET BHARARA
United States Attorney

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(26 U.S.C. §§ 7201, 7203, 7212(a).)

 PREET BHARARA
United States Attorney.

foreperson.
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