



Robert W. Wood

THE TAX LAWYER

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Now Unhappy, Happy's Pizza Founder Is Convicted Of Tax Fraud

Two sets of books and a cash skim can get you in trouble. The president and founder of Detroit-based Happy's Pizza, Happy Asker, was [found guilty](#) of 32 tax crimes and conspiracy to defraud the United States. The jury took 4½ hours to convict on three counts of filing false returns, 28 counts of aiding and assisting the filing of false returns for Happy's Pizza franchises, and one count of engaging in a corrupt endeavor to obstruct and impede the administration of the Internal Revenue Code.

Income tax and payroll tax returns were both involved. The government investigation leading up to the case involved a show of force. In August 2010, nearly 30 agents from the DEA, ATF and IRS converged on Happy's Pizza's corporate offices. They seized business and personal records and pawed through them all. Yet the company claimed that neither the DEA nor the ATF found any evidence of wrongdoing.

The IRS was a different story. In fact, the IRS concluded that Mr. Asker had under-reported income for some of the independently owned and operated franchisee restaurants. Although only nine Happy's Pizza franchises were targeted in this way, the company counts 100 independently owned and operated locations. The indictment and trial covered a tax scheme running from 2004 to 2011.



According to prosecutors, Mr. Asker and certain franchise owners and employees under-reported gross sales and payroll amounts. It was done on income tax returns and payroll tax returns for nearly 60 Happy's Pizza franchises across multiple states. The evidence at trial showed over \$6.1 million in cash that was diverted from approximately 35 different Happy's Pizza stores as part of the scheme.

The non-taxed income was then divvied up between Asker and some of the franchise owners in a weekly cash profit split. Yet during interviews leading up to the case, Mr. Asker claimed that he didn't know the others, a point that was disproved at trial. Four other defendants in the case pleaded guilty prior to Asker's trial.

Maher Bashi, who was Happy's Pizza's corporate chief operating officer, and Tom Yaldo, an owner of numerous Happy's Pizza franchises, pleaded guilty to conspiracy to defraud the United States. They allegedly created and maintained fraudulent accounting records and falsely reported income taxes and payroll taxes. Tagrid Summa Bashi, a franchise owner, also plead guilty to providing false documents to the IRS.

Mr. Asker opened Happy's Pizza in Detroit in 1996, and the chain grew to more than 100 franchises. [According to the indictment](#), the 100 store chain's founder maintained two sets of books and lied about how much money the pizza stores made. Prosecutors said phony numbers were provided to accountants and tax preparers. The government even claimed that the perpetrators hid how much their employees were making.

Some franchise partners paid employees in cash and understated their pay on returns. In cases of this sort, documentary evidence can be pivotal. It can be awfully hard to explain two sets of books and records. At sentencing, Mr. Asker faces a statutory maximum sentence of five years in prison and a \$250,000 fine for conspiracy to defraud the government.

The charges of filing a false income tax return and aiding or assisting in filing a false return carry a statutory maximum sentence of three years in prison and a fine of \$250,000 for each count. The obstruction charge carries a statutory maximum sentence of three years in prison and a fine of \$250,000.

Mr. Asker released the following statement: "We are surprised and disappointed by the verdict. Although we respect the decision of the jury, we will consider options for an appeal and will pursue those options over the next few months. The indictment did not include Happy's Pizza Franchise LLC and involved only a handful of our 100 franchise locations. We have made the changes necessary to ensure a similar situation never occurs again within our company. With this said, we will not discuss the matter further at this time."

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.