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Philly Cheesesteak Restaurant Owners Jailed Over $8 Million Tax Fraud Scheme

Two New Jersey owners of a popular South Philadelphia cheesesteak restaurant were sentenced for their decade-long conspiracy to defraud the IRS. Nicholas Lucidonio, age 57, and Anthony Lucidonio Sr., age 84, were sentenced to 20 months in prison each. The Lucidonios owned and operated Tony Luke's, a cheesesteak and sandwich restaurant located in South Philadelphia. According to a Justice Department release, from 2006 to 2016, they hid from the IRS more than $8 million in cash receipts by, among other things, depositing only a portion of the cash they received into Tony Luke's business bank accounts.

They provided incomplete information to their accountant, which caused their accountant to file false tax returns that substantially underreported business receipts and income. According to the DOJ, the Lucidonios also committed employment tax fraud by paying employees off the books in cash. But to evade detection, they paid most employees a portion of their wages, "on the books."

The Lucidonios then reportedly paid the remainder of their wages in cash without withholding federal income tax, Social Security and Medicare taxes or paying those amounts over to the IRS. According to the Department of Justice, the Lucidonios did not report the cash wages to their accountant, which caused the accountant to prepare and file false quarterly employment tax returns with the IRS.

Paying cash doesn't mean you don't have employees or that your workers are automatically independent contractors. In the case of employment taxes, the IRS still wants its cut. The IRS takes all taxes seriously, but employment taxes can be even more sensitive than income taxes. Much of the money is actually the IRS's money held in trust, so skirting employment taxes can be even more serious than skirting income taxes.

When a dispute over Tony Luke's franchising rights arose between the Lucidonios and another individual in 2015, the Lucidonios became concerned that their tax fraud scheme would be revealed. At that point, they directed that the prior year's tax returns be amended to increase reported sales. According to the Department of Justice, the Lucidonios continued to hide their ongoing payroll tax scheme. As a result of their tax fraud scheme, the defendants caused a loss of $1,321,042 to the United States. In addition to prison terms, the judge ordered both defendants to serve three years of supervised release.

If you misstep, even civil employment tax cases are serious, and proving that you have reasonable cause can be tough. In *Oppliger v. U.S.*, the court found business owners liable and subject to a $2 million penalty even though their Embezzling Accountant absconded with the money and then died! Apart from criminal charges, the government can also seek an injunction against a company and its owners.

Remember, business owners and other responsible persons have personal liability, and excuses are rarely accepted. In *Colosimo v. U.S.*, the court had little sympathy for a company owner who claimed he was duped by his bookkeeper. In Jenkins v. U.S., the owner and CEO of a publishing company didn't exercise day-to-day control over the business, but he knew payroll taxes were unpaid. The verdict: he was on the hook. Indeed, you can be liable even if have no knowledge the IRS is not being paid.

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