

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** : **CRIMINAL NO.**

**v.** : **DATE FILED: \_\_\_\_\_**

**WILLIAM J. FRIO** : **VIOLATIONS:**

: **18 U.S.C. § 371 (conspiracy - 1 count)**

: **26 U.S.C. § 7206(1) (false returns - 4 counts)**

: **18 U.S.C. § 1014 (loan fraud - 1 count)**

: **31 U.S.C. § 5324(a)(3) (aggravated structuring - 1 count)**

: **Notice of Forfeiture**

**INDICTMENT**

**COUNT ONE**  
**(tax fraud conspiracy)**

**THE GRAND JURY CHARGES THAT:**

1. At all times relevant to this indictment, defendant WILLIAM J. FRIO maintained an accounting and income tax return preparation business.
2. At all times relevant to this indictment, Nifty Fifty's was a restaurant chain with locations in metropolitan Philadelphia including Southeastern Pennsylvania and Southern New Jersey. Nifty Fifty's restaurants were operated as Subchapter S corporations or as limited liability corporations.
3. From the establishment of the first Nifty Fifty's restaurant in 1986, and continuing until the present time, Robert D. Mattei and Leo T. McGlynn, who have been charged elsewhere, were either directly or indirectly through other corporations or partnerships, both 50% owners of the Nifty Fifty's restaurants, and split all profits equally.

4. Between about 1987 and 1991, Brian F. Welsh, Joseph B. Donnelly, and Elena V. Ruiz, who have been charged elsewhere, joined the Nifty Fifty's organization, and assumed positions of head manager, head manager, and office manager, respectively. Together with Robert D. Mattei and Leo T. McGlynn, Welsh, Donnelly, and Ruiz were at all relevant times the principals of the Nifty Fifty's organization (the "Principals").

5. Since its inception in 1986, defendant WILLIAM J. FRIO provided accounting and income tax preparation services to the Nifty Fifty's organization and, as they became associated with that organization, to the Principals.

6. From in or about 1986 to in or about October 2010, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

**WILLIAM J. FRIO**

conspired and agreed, together and with Robert D. Mattei, Leo T. McGlynn, Joseph B. Donnelly, Brian F. Welsh, and Elena V. Ruiz, and with others known and unknown to the Grand Jury, to defraud the United States by impeding, impairing, obstructing, and defeating the lawful functions of the Internal Revenue Service of the Department of the Treasury in the ascertainment, computation, assessment and collection of income taxes.

**MANNER AND MEANS**

7. It was part of the conspiracy that, from 1986 on, the defendant and the Principals did not report as income to the Nifty Fifty's restaurants millions of dollars of the cash paid by customers of those restaurants (the "Skimmed Cash").

It was further a part of the conspiracy that:

8. The Principals prepared Cash Flow Reconciliation Sheets (“Cash Sheets”) to accurately document and track the receipt and disbursement of funds that had been received by the Nifty Fifty’s restaurants, including the Skimmed Cash. With defendant WILLIAM J. FRIO’s knowledge, the Principals stored hundreds of thousands of dollars of the Skimmed Cash in the Nifty Fifty’s restaurants, in personal safes in the principals’ homes, and in bank safe deposit boxes.

9. The Principals and most of the other employees of the Nifty Fifty’s restaurants received only a portion of their compensation from the Nifty Fifty’s restaurants by means of an official pay check. They received the remainder of their compensation from the Nifty Fifty’s restaurants in cash from the Skimmed Cash, including in excess of \$6.4 million dollars in cash payroll between January 2006 and December 2009, resulting in the evasion of more than \$850,000 in Nifty Fifty’s employment taxes.

10. Between January 2006 and August 2010 alone, the Principals used approximately \$5 million dollars of Skimmed Cash to pay people and businesses who supplied goods and services to the Nifty Fifty’s restaurants, providing those persons and businesses with the opportunity to evade the payment of their own taxes.

11. The Principals paid a substantial annual retainer to defendant WILLIAM J. FRIO to prepare false federal tax returns for the Nifty Fifty’s restaurants that did not report the millions of dollars of Skimmed Cash as income to those businesses.

12. The Principals paid a substantial annual retainer to defendant WILLIAM J. FRIO to prepare individual federal income tax returns for themselves that falsely under-reported income by failing to report the Skimmed Cash received by them, and that also falsely inflated

expenses and deductions in order to obtain tax refunds which FRIO and the Principals knew that the Principals were not entitled to receive.

13. Between January 1, 2006 and August 23, 2010 alone, the defendant WILLIAM J. FRIO prepared federal income tax returns for the Nifty Fifty's organization and the Principals that deliberately failed to properly account for more than \$15.6 million in gross receipts of the Nifty Fifty's restaurants, thereby evading federal employment and personal tax payments of more than \$2.2 million.

### **OVERT ACTS**

In furtherance of the conspiracy and to accomplish its objects, defendant WILLIAM J. FRIO committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. On or about April 15, 2007, defendant WILLIAM J. FRIO prepared and caused to be filed Robert D. Mattei's 2006 joint tax return, Form 1040, which falsely understated Mattei's taxable income as \$0, and requested a refund.

2. On or about April 15, 2009, defendant WILLIAM J. FRIO prepared and caused to be filed Robert D. Mattei's 2008 joint tax return, Form 1040, which falsely understated Mattei's taxable income as \$0.

3. On or about April 15, 2007, defendant WILLIAM J. FRIO prepared and caused to be filed Leo T. McGlynn's 2006 joint tax return, Form 1040, which falsely understated McGlynn's taxable income and requested a refund.

4. On or about April 15, 2008, defendant WILLIAM J. FRIO prepared and caused to be filed Leo T. McGlynn's 2007 joint tax return, Form 1040, which falsely understated

McGlynn's taxable income and requested a refund.

5. On or about April 15, 2007, defendant WILLIAM J. FRIO prepared and caused to be filed Joseph B. Donnelly's 2006 joint tax return, Form 1040, which falsely understated Donnelly's taxable income as \$0, and requested a refund.

6. On or about April 15, 2010, defendant WILLIAM J. FRIO prepared and caused to be filed Joseph B. Donnelly's 2009 joint tax return, Form 1040, which falsely understated Donnelly's taxable income as \$0, and requested a refund.

7. On or about April 15, 2007, defendant WILLIAM J. FRIO prepared and caused to be filed Brian F. Welsh's 2006 joint tax return, Form 1040, which falsely understated Welsh's taxable income as \$0, and requested a refund.

8. On or about April 15, 2010, defendant WILLIAM J. FRIO prepared and caused to be filed Brian F. Welsh's 2009 joint tax return, Form 1040, which falsely understated Welsh's taxable income as \$0, and requested a refund.

9. On or about April 15, 2007, defendant WILLIAM J. FRIO prepared and caused to be filed Elena V. Ruiz's 2006 joint tax return, Form 1040, which falsely understated Ruiz's taxable income as \$0, and requested a refund.

10. On or about April 15, 2008, defendant WILLIAM J. FRIO prepared and caused to be filed Elena V. Ruiz's 2007 joint tax return, Form 1040, which falsely understated Ruiz's taxable income as \$0, and requested a refund.

All in violation of Title 18, United States Code, Section 371.

**COUNT TWO**  
**(false return – tax year 2006)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. At all times relevant to this indictment, Nifty Fifty's was a restaurant chain with locations in metropolitan Philadelphia including Southeastern Pennsylvania and Southern New Jersey. Nifty Fifty's restaurants were operated as Subchapter S corporations or as limited liability corporations. Robert D. Mattei, Leo T. McGlynn, Brian F. Welsh, Joseph B. Donnelly, and Elena V. Ruiz, all of whom have been charged elsewhere, were at all relevant times the principals of the Nifty Fifty's organization (the "Principals").

2. At all times relevant to this indictment, defendant WILLIAM J. FRIO maintained an accounting and income tax return preparation business.

3. Since its inception in 1986, defendant WILLIAM J. FRIO provided accounting services to the Nifty Fifty's organization and, as they became associated with that organization, to the Principals.

4. Defendant WILLIAM J. FRIO was paid for providing these services to the Nifty Fifty's organization, the Principals, and his other tax return clients.

5. Defendant WILLIAM J. FRIO used his position with the Nifty Fifty's organization, and his relationship with the Principals, to embezzle hundreds of thousands of dollars of funds that belonged to the Nifty Fifty's organization and to Robert D. Mattei and Leo T. McGlynn as the beneficial owners of that organization.

6. On or about April 15, 2007, in Collegeville, PA, in the Eastern District of Pennsylvania, and elsewhere, defendant

**WILLIAM J. FRIO**

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2006, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant FRIO did not believe to be true and correct as to every material matter, in that the return reported income of \$15,325.00, when, as defendant FRIO knew, his actual income was approximately \$817,000.

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

**COUNT THREE**  
**(false return – tax year 2007)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 5 of Count Two of this indictment are incorporated here.
2. On or about April 15, 2008, in Collegetown, in the Eastern District of Pennsylvania, and elsewhere, defendant

**WILLIAM J. FRIO**

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2007, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant FRIO did not believe to be true and correct as to every material matter, in that the return reported income of \$15,306.00, when, as defendant FRIO knew, his actual income was approximately \$916,000.

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



**COUNT FOUR**  
**(false return – tax year 2008)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 5 of Count Two of this indictment are incorporated here.

2. On or about April 15, 2009, in Springfield, in the Eastern District of Pennsylvania, and elsewhere, defendant

**WILLIAM J. FRIO**

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2008, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant FRIO did not believe to be true and correct as to every material matter, in that the return reported income of \$9,462.00, when, as defendant FRIO knew, his actual income was approximately \$1,259,000.

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

**COUNT FIVE**  
**(false return – tax year 2009)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 5 of Count Two of this indictment are incorporated here.

2. On or about April 15, 2010, in Springfield, in the Eastern District of Pennsylvania, and elsewhere, defendant

**WILLIAM J. FRIO**

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2009, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant FRIO did not believe to be true and correct as to every material matter, in that the return reported income of \$10,941.00, when, as defendant FRIO knew, his actual income was approximately \$1,220,000.

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

**COUNT SIX**  
**(loan fraud)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. At all times relevant to this indictment, defendant WILLIAM J. FRIO maintained an accounting and income tax return preparation business.
2. Throughout 2006 and 2007, defendant WILLIAM J. FRIO was neither employed by, nor earned any money from, Tanfasia, Inc.
3. At all times material to this indictment, Sovereign Bank was a financial institution with accounts insured by the Federal Deposit Insurance Corporation, cert. no. 29950.
4. Between in or about May 2008 and in or about August 2008, in Wyomissing, in the Eastern District of Pennsylvania and elsewhere, defendant

**WILLIAM J. FRIO**

knowingly made and caused to be made to Sovereign Bank a false statement for the purpose of influencing the actions of Sovereign Bank upon a loan, that is a \$417,000 mortgage loan for the purchase of a residence at 310 Carolee Circle, Springfield, Pennsylvania, in that defendant FRIO caused to be submitted to Sovereign Bank a false loan application in connection with which the defendant submitted bogus federal income tax returns for 2006 and 2007, and bogus Forms W-2, falsely representing that those returns had been filed and that the defendant had earned substantial income from Tanfasia, Inc., when, as the defendant knew, the 2006 and 2007 tax returns that he had actually submitted to the Internal Revenue Service showed far less income than the false returns supplied to Sovereign Bank, and that the defendant had not been employed by Tanfasia, Inc. in 2006 or 2007.

In violation of Title 18, United States Code, Section 1014.

**COUNT SEVEN**  
**(structuring)**

**THE GRAND JURY FURTHER CHARGES THAT:**

From January 17, 2006 through December 15, 2009, in the Eastern District of Pennsylvania, defendant

**WILLIAM J. FRIO,**

for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a) and the regulations promulgated thereunder, knowingly structured transactions with Sovereign Bank, a domestic financial institution, totaling more than \$2.6 million, as part of a pattern of illegal activity involving transactions of more than \$100,000 in a twelve-month period, that is, approximately 33 structured cash withdrawal transactions totaling over \$320,000 between January 6, 2009 and November 17, 2009.

In violation of Title 31, United States Code, Sections 5324(a)(3) and (d)(2).

**NOTICE OF FORFEITURE**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. As a result of the violation of Title 31, United States Code, Section 5324 set forth in this indictment, defendant

**WILLIAM J. FRIO**

shall forfeit to the United States of America, any property, real or personal, involved in such violation, and any property traceable to such property, including, but not limited to, the sum of: \$2,600,000 in United States currency.

3. If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 31, United States Code, Section 5317(c)(1)(B), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of

any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 31, United States Code, Section 5317(c).

**A TRUE BILL:**

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**FOREPERSON**

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**ZANE DAVID MEMEGER**  
**United States Attorney**