

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
 :
 v. : Crim. No.
 :
 LEE D. GOTTESMAN : 26 U.S.C. §§ 7201 and 7202
 :

I N D I C T M E N T

The Grand Jury, in and for the District of New Jersey,
sitting at Newark, charges:

COUNTS ONE THROUGH FOUR

(Tax Evasion)

1. At all times relevant to Counts One through Four of this
Indictment:

- a. Defendant LEE D. GOTTESMAN was an attorney licensed in the State of New Jersey and a resident of Toms River, New Jersey.
- b. Defendant GOTTESMAN practiced law through the "Law Offices of Lee D. Gottesman" ("Law Office"), and was the sole owner of the Law Office, also located in Toms River, New Jersey.
- c. Attorney Trust Accounts ("ATAs") were bank accounts used by attorneys to maintain client funds, and were set up to avoid the co-mingling of funds belonging to one client with those of another, or the co-mingling of a client's funds with those of the attorney. Often, a

single ATA contained numerous sub-accounts, with each sub-account designated for an individual client, and designated by the client's name and/or a client matter number.

- d. Defendant GOTTESMAN maintained an attorney trust account (the "GOTTESMAN ATA") at a financial institution. Within the GOTTESMAN ATA, defendant GOTTESMAN maintained a sub account for each client represented by the Law Office. Each sub account was identified by a client number and name.
 - e. United States citizens were generally required to file Individual Income Tax Returns ("Form 1040") with the Internal Revenue Service ("IRS"), and to pay taxes on income they earned.
 - f. Individuals could apply for extensions of the time in which they had to file their tax returns by filing a form ("Form 4868").
 - g. The IRS could place tax liens on individuals and businesses whose tax payments were deficient. Such liens were claims against assets. The IRS often filed such liens with state and local governments, to perfect its claims against these assets.
2. From in or around 1999 through in or around 2001, defendant

GOTTESMAN employed a certified public accountant (the "CPA") to prepare defendant GOTTESMAN's Form 1040s and the Law Office's employment tax returns. Although the CPA prepared these returns, defendant GOTTESMAN did not file the returns the CPA had prepared. At various points, the CPA advised defendant GOTTESMAN, in sum and substance, about the importance of filing returns, and of filing them in a timely manner.

3. On or about April 9, 2002, because of defendant GOTTESMAN's failure to pay certain taxes, the federal government obtained a Notice of Federal Tax Lien against defendant GOTTESMAN (the "2002 Tax Lien"). The 2002 Tax Lien was filed with the Ocean County Clerk's office on or about May 2, 2002.

4. On or about November 4, 2002, defendant GOTTESMAN opened a new sub account within the GOTTESMAN ATA in the name of his wife (the "Sub Account"). Defendant GOTTESMAN listed a client number for the Sub Account, notwithstanding that his wife was never a legal client of defendant GOTTESMAN.

5. Subsequently, defendant GOTTESMAN began to use the Sub Account to pay for many of his business and personal expenses. Defendant GOTTESMAN also closed all other business and personal accounts held in his name.

6. Payments made by defendant GOTTESMAN from the Sub Account included, but were not limited to:

- a. More than \$90,000 in mortgage payments for defendant GOTTESMAN's residence;
- b. More than \$25,000 in utility payments for defendant GOTTESMAN's residence;
- c. More than \$17,000 in household expenses, including maintenance on defendant GOTTESMAN's pool, landscaping services, and construction costs; and
- d. Thousands of dollars in other personal expenses, such as life insurance premiums, auto body repair work, and personal credit card payments.

7. For each tax year from 2006 through 2009, defendant GOTTESMAN had and received taxable income. Moreover, upon that taxable income, for each tax year from 2006 through 2009, there was a substantial amount of income tax due and owing by defendant GOTTESMAN to the United States of America.

8. For each tax year from 2006 through 2009, defendant GOTTESMAN filed Form 4868s with the IRS, requesting an extension of the time to file his Form 1040s for those years, but did not actually file his Form 1040s for any of those years.

9. In or around November 2010, and again in or around June 2011, defendant GOTTESMAN was interviewed by federal law enforcement agents. During these interviews, defendant GOTTESMAN stated, in sum and substance, that:

- a. He had not filed a Form 1040 since approximately 2002.

- b. He knew that he was required to file Form 1040s, but had not done so because he feared owing taxes and because his records were not well organized.
- c. He had created and began to use the Sub Account to deposit business income and to pay personal expenses after the 2002 Tax Lien due to his belief that the IRS could not levy the GOTTESMAN ATA.

10. On or about the dates set forth below, in the District of New Jersey, and elsewhere, defendant

LEE D. GOTTESMAN

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing by him to the United States for the tax years set forth below, in that he improperly created and used an ATA sub account as his personal bank account, and paid personal and business expenses out of this account, as described in paragraphs 4 through 6 of Counts One through Four of this Indictment, each constituting a separate count of this Indictment:

COUNT	DATE	APPROXIMATE AMOUNT OF UNREPORTED INCOME	APPROXIMATE AMOUNT OF PERSONAL TAXES DUE AND OWING
1	April 16, 2007	\$100,938	\$24,989
2	April 15, 2008	\$130,354	\$33,092
3	April 15, 2009	\$105,238	\$23,947
4	April 15, 2010	\$113,065	\$30,884

In violation of Title 26, United States Code, Section 7201.

COUNTS FIVE THROUGH NINETEEN

(Willful Failure to Pay Over Payroll Taxes)

1. Paragraphs 1 through 8 of Counts One through Four of this Indictment are realleged and incorporated as though set forth in full herein.
2. At all times relevant to Counts Five through Nineteen of this Indictment:
 - a. Employers were required to deduct and withhold federal income and insurance taxes from their employees' wages.
 - b. Employer were required to prepare forms for any employee who earned more than approximately \$600 during a tax year ("Forms W-2"). Forms W-2 included wages, amounts withheld from compensation (such as federal income taxes, Social Security taxes, and Medicare taxes), and other information. Forms W-2 were provided by employers to employees and also to the IRS.
 - c. Employers were also required to prepare forms that reported the total amount of wages paid by an employer (for all employees) ("Forms 941"). Forms 941 were prepared quarterly and were filed with the IRS, and calculated the total amount paid by the employer from all of the withholdings taken from employees, and the total amount due and owing to the IRS for the quarter.
3. Also at all times relevant to Counts Five through Nineteen

of this Indictment, defendant GOTTESMAN:

- a. maintained at least two employees, besides himself, at the Law Office, including attorneys and secretaries.
- b. managed all aspects of the Law Office: he hired employees, signed and distributed payroll checks, maintained a calculation of withholding and prepared and distributed Form W-2s to employees.
- c. withheld payroll taxes from the wages paid to the Law Office's employees, purportedly for remittance to the IRS.

4. Although he withheld payroll taxes from the Law Office's employees, at no time did defendant GOTTESMAN turn these withheld payments over to the IRS, nor did he pay the employer portion of payroll taxes to the IRS, nor did he file Forms 941 with the IRS.

5. When defendant GOTTESMAN was interviewed by federal law enforcement agents, he stated, in sum and substance, that:

- a. He manually calculated withholdings for each employee of the Law Office.
- b. He prepared Forms W-2 for each employee of the Law Office.
- c. He knew that he was required to file Forms W-2 and Forms 941 with the IRS, but that he had not.

d. He knew that he was required to pay payroll taxes to the IRS, but that he had not.

6. On or about the dates set forth below, in the District of New Jersey, and elsewhere, defendant

LEE D. GOTTESMAN

being a person required to collect, truthfully account for, and pay over payroll taxes to the IRS, did willfully fail to collect and truthfully account for and pay over such taxes, and did willfully fail to file with the IRS true and accurate Forms 941 for the Law Office for the periods set forth below, each constituting a separate count of this Indictment:

COUNT	TAX QUARTER ENDING	FAILURE TO FILE/PAY OVER TAXES
5	June 30, 2006	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,770.37.
6	September 30, 2006	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,976.33.
7	December 31, 2006	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,570.51.
8	March 31, 2007	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,962.28.
9	June 30, 2007	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,143.47.

COUNT	TAX QUARTER ENDING	FAILURE TO FILE/PAY OVER TAXES
10	September 30, 2007	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$1,598.62.
11	December 31, 2007	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$1,567.45.
12	March 31, 2008	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$1,910.80.
13	June 30, 2008	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$1,637.82.
14	September 30, 2008	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$1,910.79.
15	December 31, 2008	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$1,911.55.
16	March 31, 2009	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,235.10.
17	June 30, 2009	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,293.77.
18	September 30, 2009	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,627.22.
19	December 31, 2009	Failed to file with the IRS a Form 941 for the Law Office and failed to pay over payroll taxes in the amount of approximately \$2,395.99.

In violation of Title 26, United States Code, Section 7202.

A TRUE BILL

FOREPERSON



PAUL J. FISHMAN
UNITED STATES ATTORNEY

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

LEE D. GOTTESMAN

INDICTMENT FOR

26 U.S.C. §§ 7201 & 7202

A True Bill,

Foreperson

PAUL J. FISHMAN

UNITED STATES ATTORNEY

NEWARK, NEW JERSEY

ZACH INTRATER

ASSISTANT U.S. ATTORNEY

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