

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO.: 20- cr- 211 - 1, 2
v.	:	DATE FILED: 7/21/20
ANTHONY LUCIDONIO, SR.	:	VIOLATIONS:
NICHOLAS LUCIDONIO	:	18 U.S.C. § 371
	:	(conspiracy to defraud – 1 count)
	:	26 U.S.C. § 7206(2)
	:	(aiding/assisting false tax returns - 19 counts)
	:	26 U.S.C § 7201
	:	(tax evasion – 4 counts)
	:	18 U.S.C. § 2
	:	(aiding and abetting)

INDICTMENT

COUNT ONE

**(Conspiracy to Defraud the United States)
18 U.S.C. § 371)**

THE GRAND JURY CHARGES THAT:

At times material to this Indictment:

Introduction

1. Defendant ANTHONY LUCIDONIO, SR. resided in New Jersey.
2. Defendant NICHOLAS LUCIDONIO, son of defendant ANTHONY LUCIDONIO, SR., resided in New Jersey.
3. Tony Luke, Inc. (“Tony Luke”), a Pennsylvania corporation, was a well-known and popular cheesesteak sandwich restaurant doing business as Tony Luke’s and located at 39 East Oregon Avenue in South Philadelphia. Founded in 1992 by defendant ANTHONY

LUCIDONIO, SR., Tony Luke sold sandwiches, beverages, and other menu items. Defendant ANTHONY LUCIDONIO, SR. owned 90 percent of Tony Luke, while defendant NICHOLAS LUCIDONIO and Individual A, a person known to the grand jury, each owned 5 percent. The named defendants managed the day-to-day operations of Tony Luke.

4. Tony Luke's Commissary, Inc. ("Tony Luke's Commissary"), a Pennsylvania corporation, was an entity that held Tony Luke's administrative and corporate offices, purchased food supplies, and prepared the food for delivery to the Tony Luke's restaurant. Defendant ANTHONY LUCIDONIO, SR. owned 90 percent of Tony Luke's Commissary, while defendant NICHOLAS LUCIDONIO and Individual A owned 5 percent each.

5. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury responsible for enforcing and administering the tax laws of the United States.

6. In order to accurately assess and collect taxes, the IRS must, among other things, determine taxpayers' actual income, credits, and deductions. To help fulfill the IRS's mission, the tax laws of the United States require taxpayers to file tax returns and forms, including, among others:

- a. Form 1040: U.S. Individual Income Tax Return, Form 1040 ("Form 1040"), and related IRS Schedules and Forms, is a type of annual tax return used by individual taxpayers to report their income, any allowable deductions, and tax liability;
- b. Form 1120S: U.S. Income Tax Return for an S Corporation, Form 1120S ("Form 1120S"), is a type of annual information return used by corporate

entities, specifically S corporations, to report receipts, expenses, and business income. S corporations do not themselves have tax liability for net business income reportable on Form 1120S. Instead, an S corporation owner(s) reports any net business income from the S corporation on Forms 1120S as well as “flow through” income on the owner’s Form 1040, where it is taxed as individual income;

- c. Form 941: Employer’s Quarterly Federal Tax Return, Form 941 (“Form 941”), is a type of tax return used by employers. Employers must withhold, account for, and pay over to the IRS certain taxes from employee wages, including federal income taxes, Medicare taxes, and Social Security taxes, and must further account for and pay over their own share of such taxes based upon total wages they pay (collectively “payroll taxes” or “employment taxes”). To account for such payroll taxes, employers must prepare and submit Forms 941, among other forms, disclosing all wages paid, taxes withheld, and payroll taxes due and owing.

Defendants’ Tax Fraud Scheme

7. From at least in or about 2006 to in or about 2016, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO engaged in a scheme to defraud the United States Treasury by: (1) concealing business receipts and income of Tony Luke to evade income taxes; and (2) paying employees in cash “off the books” to evade payroll taxes.

Income Tax Fraud

8. A substantial portion of Tony Luke’s customers paid in cash.

9. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO caused to be opened business bank accounts at Bank A, titled in the name of Tony Luke, to deposit credit card and cash sales.

10. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO, while depositing a portion of their cash receipts, knowingly, intentionally, and deliberately failed to deposit millions of dollars in additional cash receipts into the company's business bank accounts. Such accounts therefore did not contain a true accounting of Tony Luke's receipts and income.

11. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO tracked Tony Luke's true receipts and income by using a point of sale ("POS") system at its counter registers that computed all daily credit card and cash sales. Daily POS printouts were delivered to the company's administrative offices at Tony Luke's Commissary, where the defendants caused the true sales and income of the business to be recorded in a separate set of books and records.

12. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO retained a Certified Public Accountant (the "accountant") to prepare and file the annual corporate income tax returns for Tony Luke. To prepare the returns, defendants provided the accountant with the business's bank account information, knowing that such information failed to account for millions in un-deposited cash receipts. Defendants failed to provide the accountant the POS daily sales records and the second set of books and records reflecting true receipts and income.

13. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO caused the accountant to prepare and file with the IRS false and fraudulent corporate tax returns,

Forms 1120S, for Tony Luke, that, among other items, fraudulently and substantially underreported the gross receipts and ordinary business income of Tony Luke.

14. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO also retained the accountant to prepare their individual tax returns. To further advance their tax fraud scheme, defendants caused the accountant to prepare and file with the IRS false and fraudulent individual income tax returns, Forms 1040, that, among other things, fraudulently understated the flow-through income from an S corporation that they received as Tony Luke's owners.

15. In or about 2015, disputes concerning franchising rights and royalties from the Tony Luke brand arose between the defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO, and Individual A.

16. Concerned that their tax fraud scheme would be revealed because of their disputes with Individual A, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO, to cover up their scheme, in or about 2016, caused the accountant to prepare and file amended corporate tax returns, Forms 1120S, for Tony Luke for the 2013 and 2014 tax years. The amended returns, unlike the initial returns, reported the approximate true sales and receipts based on POS records. However, at the same time, defendants caused to be fraudulently claimed and characterized substantial additional, but false and fictitious, cost of goods sold expenses to continue their tax fraud scheme.

17. As a result of their income tax fraud scheme, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO fraudulently concealed from the IRS more than approximately \$8 million in gross receipts earned by Tony Luke.

Payroll Tax Fraud

18. As owners and operators of Tony Luke and Tony Luke's Commissary, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO were responsible persons for collecting, truthfully accounting for, and paying over federal payroll taxes with respect to employees.

19. To conceal wages, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO paid a significant number of their employees "off-the-books" in cash, failing to withhold, account for, and pay over the required payroll taxes.

20. To evade detection, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO paid a portion of wages to employees "on the books." On payday, defendants caused to be handed out paychecks that reflected a portion of the employees' hourly wages with the required taxes withheld. However, the wages defendants paid and reported in this fashion represented but a fraction of the true hours the employees worked, and but a fraction of the total wages that the defendants paid them.

21. In furtherance of their tax fraud scheme, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO directed that their employees endorse their paychecks and give them back to the defendants and their store managers, which defendants then redeposited into company bank accounts.

22. In exchange for return of the endorsed payroll checks, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO provided their employees envelopes containing cash. The cash provided included not only the net amount of their paycheck after taxes, but substantial additional cash wages for the additional hours they worked for which no

federal taxes were withheld or paid over to the IRS. For example, while some employees may have worked as many as 50 hours a week or more, only 25 hours would be paid “on the books” with taxes withheld, and 25 hours would be paid in additional cash “off the books” for which no taxes were withheld.

23. To further advance their tax fraud scheme, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO provided to their accountant false and fraudulent information concerning hours worked by each employee for the preparation and issuance of weekly payroll checks to each employee.

24. By substantially understating the hours each employee worked, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO caused their accountant to substantially understate the wages paid to the employees of Tony Luke and Tony Luke’s Commissary, and the payroll taxes due and owing to the United States, causing their accountant to prepare and file with the IRS false and fraudulent employment tax returns, Forms 941.

THE CONSPIRACY

25. From in or about 2006 and continuing through in or about 2016, in the Eastern District of Pennsylvania and elsewhere, defendants,

**ANTHONY LUCIDONIO, SR. and
NICHOLAS LUCIDONIO**

did unlawfully, voluntarily, intentionally and knowingly conspire, combine, confederate, and agree together and with each other, and with others known and unknown to the Grand Jury, to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of the Treasury Department in the

ascertainment, computation, assessment, and collection of the revenue: to wit, federal income taxes and payroll taxes.

MANNER AND MEANS

It was part, and in furtherance, of the conspiracy that defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO:

26. Concealed millions in gross sales and receipts of Tony Luke by, among other things, depositing only a portion of cash sales into company bank accounts.

27. Provided their accountant with Tony Luke's bank accounts reflecting just a portion of cash sales, and failed to provide to their accountant other books and records kept by the defendants reflecting true business receipts and sales.

28. Caused employees of Tony Luke and Tony Luke's Commissary to be paid substantial cash wages "off the books" without withholding the required payroll taxes from these wages, truthfully accounting for these wages on Forms 941, and paying payroll taxes over to the IRS.

29. Caused to be prepared and filed with the IRS false and fraudulent corporate tax returns, Forms 1120S, that, among other things, fraudulently understated Tony Luke's gross receipts and ordinary business income.

30. Caused to be prepared and filed with the IRS false and fraudulent individual tax returns, Forms 1040, that fraudulently understated their flow-through income from an S corporation, and taxes due and owing to the United States.

31. Caused to be prepared and filed with the IRS false and fraudulent employment tax returns, Forms 941, which fraudulently understated total wages paid and payroll taxes owed.

OVERT ACTS

In furtherance of the conspiracy, defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO caused to be filed with the IRS false and fraudulent corporate tax returns, Forms 1120S, for Tony Luke that, among other things, underreported gross receipts, as follows, each filing constituting a separate overt act:

- a. On or about April 15, 2007, the filing of Tony Luke's 2006 Form 1120S.
- b. On or about April 9, 2009, the filing of Tony Luke's 2008 Form 1120S.
- c. On or about April 14, 2010, the filing of Tony Luke's 2009 Form 1120S.
- d. On or about April 16, 2012, the filing of Tony Luke's 2011 Form 1120S.
- e. On or about April 14, 2014, the filing of Tony Luke's 2013 Form 1120S.
- f. On or about April 14, 2015, the filing of Tony Luke's 2014 Form 1120S.

2. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO caused to be filed with the IRS false and fraudulent individual tax returns, Forms 1040, that underreported their respective flow-through income from an S corporation, as follows, each filing constituting a separate overt act:

Overt Act	Filed Form 1040	Tax Period	Date Filed (Approx.)
a.	Anthony Lucidonio, Sr.	2011	10/11/2012
b.	Nicholas Lucidonio	2011	9/19/2012
c.	Anthony Lucidonio, Sr.	2013	10/14/2014
d.	Nicholas Lucidonio	2013	9/29/2014
e.	Anthony Lucidonio, Sr.	2014	10/15/2015
f.	Nicholas Lucidonio	2014	7/9/2015

3. Defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO caused to be filed with the IRS false and fraudulent employer tax returns, Forms 941, for Tony Luke and Tony Luke's Commissary that, among other things, underreported wages paid and taxes due as follows, each filing constituting a separate overt act:

Overt Act	Filed Form 941	Tax Period	Date Filed (Approx.)
a.	Tony Luke	3Q: 2013	4/30/2013
b.	Tony Luke's Commissary	3Q: 2013	4/30/2013
c.	Tony Luke	2Q: 2014	7/31/2014
d.	Tony Luke's Commissary	2Q: 2014	7/31/2014
e.	Tony Luke	3Q: 2014	10/31/2014
f.	Tony Luke's Commissary	3Q: 2014	10/31/2014
g.	Tony Luke	2Q: 2015	7/31/2015
h.	Tony Luke's Commissary	2Q: 2015	7/31/2015
i.	Tony Luke	3Q: 2015	10/31/2015
j.	Tony Luke's Commissary	3Q: 2015	10/31/2015
k.	Tony Luke	4Q: 2015	1/31/2016
l.	Tony Luke's Commissary	4Q: 2015	1/31/2016

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

COUNTS TWO AND THREE

(Aiding/Assisting False Corporate Tax Returns)
26 U.S.C. § 7206(2)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 17 of Count One are incorporated here.
2. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendants,

**ANTHONY LUCIDONIO SR., and
NICHOLAS LUCIDONIO**

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of U.S. Income Tax Returns for an S Corporation, Forms 1120S, of Tony Luke, for the calendar years specified below. The tax returns were false and fraudulent as to material matters, in that the said returns, among other false items, substantially understated Tony Luke's gross receipts and ordinary business income, as further specified below, whereas, as defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO then and there knew, Tony Luke received substantially more gross receipts and ordinary business income than the defendants caused to be reported on Forms 1120S:

Count	Tax Return	Tax Period	Date Filed (Approx.)	False Item(s)
2	Tony Luke Form 1120S	2013	4/14/2014	a. <u>Line 1</u> : gross receipts, \$2,889,234 b. <u>Line 21</u> : ordinary business income, \$112,621
3	Tony Luke Form 1120S	2014	4/14/2015	a. <u>Line 1</u> : gross receipts, \$3,123,929 b. <u>Line 21</u> : ordinary business income, \$286,123

In violation of Title 26, United States Code, Section 7206(2).

COUNTS FOUR THROUGH SEVEN

(Aiding/Assisting False Individual Tax Returns)
26 U.S.C. § 7206(2)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 17 of Count One are incorporated here.
2. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendants

**ANTHONY LUCIDONIO SR., and
NICHOLAS LUCIDONIO**

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of U.S. Individual Income Tax Returns, Forms 1040, of the defendants for the calendar years specified below. The tax returns were false and fraudulent as to material matters, in that the said returns, among other false items, substantially understated income from S corporations, as further specified below; whereas, as defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO then and there knew, they received substantially more income from S corporations than they caused to be disclosed and reported on Forms 1040:

Count	Tax Return	Tax Period	Date Filed (Approx.)	False Item(s)
4	Form 1040 Anthony Lucidonio, Sr.	2013	10/14/2014	a. <u>Line 17</u> : income from rental real estate, royalties, partnerships, S corporations, trusts, etc., \$247,713
5	Form 1040 Anthony Lucidonio, Sr.	2014	10/15/2015	a. <u>Line 17</u> : income from rental real estate, royalties, partnerships, S corporations, trusts, etc., (\$-94,077)

Count	Tax Return	Tax Period	Date Filed (Approx.)	False Item(s)
6	Form 1040 Nicholas Lucidonio	2013	9/29/2014	a. <u>Line 17</u> : income from rental real estate, royalties, partnerships, S corporations, trusts, etc., (-\$11,310)
7	Form 1040 Nicholas Lucidonio	2014	7/9/2015	a. <u>Line 17</u> : income from rental real estate, royalties, partnerships, S corporations, trusts, etc., \$42,754

In violation of Title 26, United States Code, Section 7206(2).

COUNTS EIGHT THROUGH TWENTY

(Aiding/Assisting False Employment Tax Returns)
26 U.S.C. § 7206(2)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 7, and 18 through 24 of Count One, are incorporated here.
2. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendants

**ANTHONY LUCIDONIO, SR. and
NICHOLAS LUCIDONIO**

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of Employer's Quarterly Federal Tax Returns, Forms 941, of Tony Luke and Tony Luke's Commissary, for the calendar years and quarters specified below. The tax returns were false and fraudulent as to material matters, in that the said returns, among other false items, substantially understated the total wages paid to employees, and the total taxes due and owing as further specified below, whereas, as defendants ANTHONY LUCIDONIO, SR. and NICHOLAS LUCIDONIO then and there knew, Tony Luke and Tony Luke's Commissary paid more wages and owed more taxes than the defendants disclosed and reported on Forms 941:

Count	Tax Return	Tax Period	Date Filed (Approx.)	False Item(s)
8	Form 941 Tony Luke	2Q: 2014	7/31/2014	a. <u>Line 2</u> : wages paid, \$131,821 b. <u>Line 10</u> : total taxes, \$43,157
9	Form 941 Tony Luke	3Q: 2014	10/31/2014	a. <u>Line 2</u> : wages paid, \$138,718 b. <u>Line 10</u> : total taxes, \$46,459
10	Form 941 Tony Luke	4Q: 2014	1/31/2015	a. <u>Line 2</u> : wages paid, \$120,693

Count	Tax Return	Tax Period	Date Filed (Approx.)	False Item(s)
				c. <u>Line 10</u> : total taxes, \$38,610
11	Form 941 Tony Luke	1Q: 2015	4/30/2015	a. <u>Line 2</u> : wages paid, \$103,986 b. <u>Line 10</u> : total taxes, \$36,492
12	Form 941 Tony Luke	2Q: 2015	7/31/2015	a. <u>Line 2</u> : wages paid, \$86,187 b. <u>Line 10</u> : total taxes, \$26,325
13	Form 941 Tony Luke	3Q: 2015	10/31/2015	a. <u>Line 2</u> : wages paid, \$83,539 b. <u>Line 10</u> : total taxes, \$19,711
14	Form 941 Tony Luke	4Q: 2015	1/31/2016	a. <u>Line 2</u> : wages paid, \$77,578 b. <u>Line 10</u> : total taxes, \$18,263
15	Form 941 Tony Luke's Commissary	2Q: 2014	7/31/2014	a. <u>Line 2</u> : wages paid, \$86,908 b. <u>Line 10</u> : total taxes, \$33,419
16	Form 941 Tony Luke's Commissary	3Q: 2014	10/31/2014	a. <u>Line 2</u> : wages paid, \$92,006 b. <u>Line 10</u> : total taxes, \$36,760
17	Form 941 Tony Luke's Commissary	1Q: 2015	4/30/2015	a. <u>Line 2</u> : wages paid, \$85,946 b. <u>Line 10</u> : total taxes, \$33,793
18	Form 941 Tony Luke's Commissary	2Q: 2015	7/31/2015	a. <u>Line 2</u> : wages paid, \$89,267 b. <u>Line 10</u> : total taxes, \$36,016
19	Form 941 Tony Luke's Commissary	3Q: 2015	10/31/2015	a. <u>Line 2</u> : wages paid, \$102,293 b. <u>Line 10</u> : total taxes, \$40,205
20	Form 941 Tony Luke's Commissary	4Q: 2015	1/31/2016	a. <u>Line 2</u> : wages paid, \$90,242 b. <u>Line 10</u> : total taxes, \$32,113

In violation of Title 26, United States Code, Section 7206(2).

COUNTS TWENTY-ONE THROUGH TWENTY-FOUR

(Tax Evasion)
26 U.S.C. § 7201

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 17 of Count One are incorporated here.
2. From in or about January of each tax year specified below through in or about the date each tax return was filed in the following year as specified below, in the Eastern District of Pennsylvania and elsewhere, defendants

**ANTHONY LUCIDONIO SR., and
NICHOLAS LUCIDONIO**

did willfully attempt to evade and defeat substantial individual income taxes due and owing by the defendants to the United States of America, for each of the tax years specified below, by committing, and causing to be committed, the following affirmative acts, among others: (a) causing to be deposited only portions of Tony Luke's cash receipts into the company's bank accounts; (b) providing their accountant incomplete and misleading information concerning gross receipts, income, and expenses; (c) causing to be prepared and filed false and fraudulent corporate income tax returns, Forms 1120S; (d) causing to be prepared and filed false and fraudulent individual income tax returns, Forms 1040:

Count	Tax Year	Income Tax Liability	Date Return Filed (Approx.)
21	2013	Form 1040 Anthony Lucidonio, Sr.	10/9/2014
22	2014	Form 1040 Anthony Lucidonio, Sr.	4/14/2015
23	2013	Form 1040 Nicholas Lucidonio	9/23/2014
24	2014	Form 1040 Nicholas Lucidonio	7/9/2015

In violation of Title 26, United States Code, Section 7201, and Title 18, United States Code, Section 2.

A TRUE BILL


FOREPERSON

for Kathryn M. Caplan
WILLIAM M. MCSWAIN
United States Attorney
Eastern District of Pennsylvania

No. _____

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

Criminal Division

THE UNITED STATES OF AMERICA

vs.

ANTHONY LUCIDONIO, SR., and NICHOLAS LUCIDONIO

INDICTMENT

18 U.S.C. § 371 (conspiracy to defraud -1 count); 26 U.S.C. § 7206(2) (aiding/assisting false tax returns - 19 counts); 26 U.S.C § 7201 (tax evasion - 4 counts); 18 U.S.C. § 2 (aiding and abetting)

A true bill.

Foreman

Filed in open court this _____ A.D. 20 _____ day,

Of _____

Clerk

Bail, \$ _____