

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
:  
**UNITED STATES OF AMERICA**  
:  
- v. -  
:  
**RICHARD JOSEPHBERG,**  
:  
**Defendant.**  
:  
-----X

**INDICTMENT**  
**S2 04 Cr. 1002 (CLB)**

**COUNT ONE**  
(Evasion of Payment of Income Taxes)

The Grand Jury charges:

**Introduction**

1. At all times relevant to this Indictment, RICHARD JOSEPHBERG, the defendant, resided in Greenwich, Connecticut and Westchester County, New York . Since in or about 2001, RICHARD JOSEPHBERG has resided at 16 Half Mile Road in Armonk, New York.

2. From in or about 1977 through 2004, RICHARD JOSEPHBERG, the defendant, was a member of various investment banking and investment advisory firms, including Josephberg, Grosz & Co. (“JG&Co.”). From in or about 1986 through 1993, RICHARD JOSEPHBERG was a 50% owner of JG&Co., which maintained its offices at 633 Third Avenue, New York, New York. On or about January 1, 1994, JOSEPHBERG purchased the 50% interest of the other owner of JG&Co., making JOSEPHBERG the sole owner.

3. Between 1995 and 2003, RICHARD JOSEPHBERG, the defendant, earned in excess of \$2,000,000 as a result of investment banking and other services he performed for certain corporations and other entities, either through JG&Co. or in his individual capacity.

### JOSEPHBERG's Tax Liabilities

4. From in or about 1977 through in or about 1985, RICHARD JOSEPHBERG participated, either directly or through certain partnership or other entities, in certain tax shelters. As a result of his participation in those tax shelters, JOSEPHBERG claimed large partnership losses on his U.S. Individual Income Tax Returns, Forms 1040. The Internal Revenue Service ("IRS") audited JOSEPHBERG's tax returns for the 1977 through 1980 tax years, disallowed all or substantially all of the losses attributable to the tax shelters, and, in or about 1993, issued notices of deficiency to JOSEPHBERG indicating that JOSEPHBERG owed the following amounts for the following tax years: 1977 — \$4,781; 1978 — \$100,589; 1979 — \$197,902; and 1980 — \$168,134. In or about 1996, the United States Tax Court rejected JOSEPHBERG's challenges to the notices of deficiency, entering an order upholding the deficiency amounts claimed by the IRS in the notices of deficiency for the 1977-1980 tax years.

5. JOSEPHBERG's 1985 U.S. Individual Income Tax Return, Form 1040, also claimed large partnership losses attributable to JOSEPHBERG's participation in tax shelters. In or about 1992, the IRS issued a notice of deficiency advising JOSEPHBERG of its determination that JOSEPHBERG owed \$548,592 for the 1985 tax year. Although RICHARD JOSEPHBERG filed a petition with the Tax Court in 1993 contesting the deficiency determination, he failed to prosecute the petition. Consequently, in or about April 1996, the United States Tax Court dismissed JOSEPHBERG's petition for lack of prosecution, thereby upholding the \$548,592 deficiency set forth in the IRS's notice of deficiency. The IRS issued three additional notices of deficiency advising JOSEPHBERG that he owed additional amounts for the 1985 tax year, which amounts were based on adjustments to partnerships in which JOSEPHBERG had an interest. Those notices were

issued on or about the following dates listing the following amounts: February 1993 — \$95,428; May 1997 — \$659,299; and August 1997 — \$13,479. JOSEPHBERG did not challenge these notices.

6. In or about May 1997, the IRS issued notices of deficiency to JOSEPHBERG for the 1983 and 1984 tax years, based on adjustments made to certain partnerships in which JOSEPHBERG participated. The IRS's notice of deficiency for the 1983 year indicated that JOSEPHBERG owed \$21,911; the notice of deficiency for 1984 indicated that JOSEPHBERG owed \$427,252. JOSEPHBERG did not challenge these notices.

#### **JOSEPHBERG's Scheme To Evade Payment Of Taxes**

7. Beginning in or about 1995, and continuing through the date of the filing of this Indictment, in anticipation of having to pay taxes that were assessed by the IRS, RICHARD JOSEPHBERG, the defendant, executed a scheme designed to evade payment of personal income taxes that he owed for the calendar years 1977 through 1980, and 1983 through 1985. As further described below, JOSEPHBERG used various means to evade payment of those taxes, including, among others: (a) directing income and assets to be paid into nominee bank accounts for the purpose of concealing and attempting to conceal his true and correct income and assets; (b) directing income to be paid to certain entities and thereafter diverting that income to pay various personal expenses to create the appearance that the defendant had little or no income; (c) causing to be submitted to the IRS false information for the purpose of concealing and attempting to conceal his income and assets; and (d) causing bankruptcy petitions to be filed for himself and his wife, resulting in false and misleading claims being made about JOSEPHBERG's assets.

**A. JOSEPHBERG's Use of Nominee Bank Accounts To Conceal His Income And Assets**

8. Between 1995 and 2002, RICHARD JOSEPHBERG earned hundreds of thousands of dollars of income as a result of investment banking services he performed for certain corporations. Many of the companies for which JOSEPHBERG performed services paid JOSEPHBERG in shares of stock, rather than by check or wire transfer of funds. In order to hide from the IRS his receipt of the income in the form of shares of stock, and to evade paying taxes that were due and owing, JOSEPHBERG directed the companies that were paying his fees through shares of stock to issue the shares not in his own name but, instead, in the name of JOSEPHBERG's family members, including his minor children, as well as other third parties.

9. In connection with his request to have shares of stock issued in the names of family members, RICHARD JOSEPHBERG caused those shares of stock to be deposited into investment accounts at certain financial institutions, which accounts RICHARD JOSEPHBERG caused to be opened in the names of family members. Although those investment accounts were opened in family members' names, RICHARD JOSEPHBERG exercised control over the accounts by directing transfers and sales of shares contained in the accounts. RICHARD JOSEPHBERG also directed how the proceeds of the sales would be used, including to pay: RICHARD JOSEPHBERG's personal bills; tuition bills for the private-school college education of RICHARD JOSEPHBERG's child; and to pay for wedding and other gifts given by RICHARD JOSEPHBERG and family members in connection with weddings and other ceremonies to which RICHARD JOSEPHBERG and family members were invited.

10. Among the shares of stock that RICHARD JOSEPHBERG earned as income but which he directed, on or about the dates listed below, to be issued in the names of family

members and others were the following:

a. Between September 1995 and April 1996, RICHARD JOSEPHBERG directed that approximately 31,000 shares of stock of GK Intelligent Systems, Inc., be issued in the names of his wife and children.

b. In or about December 5, 1995, RICHARD JOSEPHBERG directed that approximately 25,000 shares of stock of Physicians Dispensing Systems, Inc., be issued in the name of his wife, as custodian for his three children.

c. On or about January 30, 1996, RICHARD JOSEPHBERG directed that approximately 270,000 shares of stock of International Investment Group, Ltd., be issued in the names of his wife and children.

d. On or about October 7, 1996, RICHARD JOSEPHBERG directed that approximately 10,000 shares of stock of Interiors, Inc., which shares he earned as a result of his position as a Director of that company, be issued in the names of various family members and third parties.

e. On or about June 18, 1997, RICHARD JOSEPHBERG directed that approximately 13,000 shares of stock of Interiors, Inc., which shares he earned as a result of his position as a Director of that company, be issued in the names of various family members and third parties.

f. On or about October 28, 1997, RICHARD JOSEPHBERG directed that approximately 187,500 shares of stock of BCAM International, Inc., be issued in the names of various third parties.

g. In or about May 1998, RICHARD JOSEPHBERG directed that

approximately 47,660 shares of stock of Interiors, Inc., be issued in the names of various family members and third parties.

h. In or about November 1998, RICHARD JOSEPHBERG directed that approximately 10,000 shares of stock of Interiors, Inc., which shares he earned as a result of his position as a Director of that company, be issued in the names of various family members and third parties.

i. In or about March 1999, RICHARD JOSEPHBERG directed that approximately 1,500 shares of stock of Interiors, Inc., which shares he earned as a result of his position as a Director of that company, be issued in the names of various third parties.

j. In or about April 1999, RICHARD JOSEPHBERG directed that approximately 5,000 shares of stock of Interiors, Inc., be issued in the names of various family members and third parties.

**B. JOSEPHBERG's Use Of Entities To Conceal His Income And Assets**

11. In or about October 1997, RICHARD JOSEPHBERG caused the incorporation, in New York State, of J.G. Capital, Inc. ("J.G. Capital"). In connection with the preparation and filing of U.S. Income Tax Returns for J.G. Capital, RICHARD JOSEPHBERG listed the sole owner of the stock of J.G. Capital as J.G. Partners, a limited partnership that was registered by RICHARD JOSEPHBERG in New York State in or about October 1997. In connection with the preparation and filing of U.S. Income Tax Returns for J.G. Partners, RICHARD JOSEPHBERG listed his three children (including his minor child) as each having a 33% ownership interest, while RICHARD JOSEPHBERG and his wife were listed as .5% owners. Although RICHARD JOSEPHBERG caused members of his immediate family, including his minor child, to be listed as

principal owners of J.G. Partners (and thus J.G. Capital), RICHARD JOSEPHBERG exercised full control over those entities.

12. From in or about October 1997 through in or about 2004, in order to conceal from the IRS that he had substantial assets and cash available for his personal use, and to evade paying taxes that were due and owing, RICHARD JOSEPHBERG, the defendant, caused certain income that he earned in his personal capacity to be deposited into, and his personal expenses to be paid out of, bank accounts in the name of J.G. Capital and J.G. Partners.

13. Among the items of income that RICHARD JOSEPHBERG earned in his personal capacity but which he caused to be directed to the accounts of J.G. Capital and J.G. Partners were the following:

a. In or about November 1998, RICHARD JOSEPHBERG earned approximately 15,000 shares of stock of Interiors, Inc., as payment for serving as a Director of that company. RICHARD JOSEPHBERG caused those shares to be issued in the name of J.G. Partners.

b. In or about 1999, RICHARD JOSEPHBERG earned approximately \$30,000 in fees for serving as a Director of Interiors, Inc. RICHARD JOSEPHBERG caused those fees to be paid to, and deposited into the bank account of, J.G. Capital.

c. In or about 1999, RICHARD JOSEPHBERG earned approximately 37,500 shares of stock as compensation for serving as a Director of Advanced Optics Electronics, Inc. RICHARD JOSEPHBERG caused those shares to be issued to, and deposited into the account of, J.G. Capital.

d. In or about 2000, RICHARD JOSEPHBERG earned approximately \$30,000 in fees for serving as a Director of Interiors, Inc. RICHARD JOSEPHBERG caused those

fees to be paid to, and deposited into the bank account of, J.G. Capital.

**C. JOSEPHBERG's False Statements To The IRS**

\_\_\_\_\_14. In or about October 1996, the Internal Revenue Service began taking steps to collect the taxes that RICHARD JOSEPHBERG owed for the tax years 1977-80 and 1983-1985. In connection with those collection efforts, an IRS collections officer met with RICHARD JOSEPHBERG and questioned him about his finances and ability to pay his outstanding IRS debt. At that meeting, which occurred on or about May 28, 1997 in Westchester County, New York, RICHARD JOSEPHBERG told the IRS collections agent that he was struggling to survive financially, had no imminent business deals, and had no hidden assets or income.

15. On or about June 4, 1997, at the request of the IRS collections officer who was attempting to ascertain the assets and liabilities of RICHARD JOSEPHBERG, JOSEPHBERG executed and caused to be delivered to the IRS two IRS Forms, both of which were signed by RICHARD JOSEPHBERG under penalties of perjury: a Collection Statement for Individuals, IRS Form 433A, and a Collection Information Statement for Businesses, IRS Form 433B. In the Form 433A, RICHARD JOSEPHBERG represented that he owned no securities and stocks and that he was a partner in JG&Co. In the Form 433B, RICHARD JOSEPHBERG represented that he owned 50% of JG&Co. and that the gross receipts of that entity for 1996 totaled \$167,500.

16. The representations made by RICHARD JOSEPHBERG to the IRS in May 1997 were false in that, as RICHARD JOSEPHBERG well knew and believed: RICHARD JOSEPHBERG owned and tens of thousands of shares of securities in the names of nominees, which shares of stock RICHARD JOSEPHBERG had earned as an investment banker; and RICHARD JOSEPHBERG had an imminent business deal relating to BCAM International, which business deal



was conducted between December 1996 and September 1997 and resulted, in September and October 1997, in the payment to RICHARD JOSEPHBERG of a \$300,000 fee and 187,500 shares of BCAM stock, which fees RICHARD JOSEPHBERG caused to be directed to an entity he controlled and which shares RICHARD JOSEPHBERG caused to be issued to his family members rather than himself.

17. The representations made by RICHARD JOSEPHBERG to the IRS on the Forms 433A and 433B in June 1997 were false in that, as RICHARD JOSEPHBERG well knew and believed: RICHARD JOSEPHBERG owned and held tens of thousands of shares of securities in the names of nominees, which shares of stock RICHARD JOSEPHBERG had earned as an investment banker; and RICHARD JOSEPHBERG was the 100% owner of JG&Co.

18. In or about May, 1998, at the request of the IRS, RICHARD JOSEPHBERG executed and caused to be faxed to the IRS in June 1998 two additional IRS Forms 433A and 433B, both of which were signed under penalties of perjury. In the Form 433A, RICHARD JOSEPHBERG represented that he owned no securities and stocks. RICHARD JOSEPHBERG further represented that he conducted business through JG&Co. In the Form 433B, RICHARD JOSEPHBERG represented that JG&Co. had assets consisting of \$1000 in cash.

19. The representations made by RICHARD JOSEPHBERG to the IRS on the Forms 433A and 433B in June 1998 were false in that, as RICHARD JOSEPHBERG well knew and believed: RICHARD JOSEPHBERG owned and held tens of thousands of shares of securities in the names of nominees, which shares of stock RICHARD JOSEPHBERG had earned as an investment banker; RICHARD JOSEPHBERG falsely omitted on his 433A his ownership interest in J.G. Partners; and RICHARD JOSEPHBERG falsely omitted on his 433A the existence of a Fleet Bank

account held in his own name.

**D. The Bankruptcy Filings**

20. As a result of the collection efforts by the IRS, RICHARD JOSEPHBERG caused his wife to file a bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York in or about September 1997. In that petition, which was signed by RICHARD JOSEPHBERG's wife under penalties of perjury, JOSEPHBERG's wife listed RICHARD JOSEPHBERG as a co-debtor and stated that he had no current income. In truth and fact, RICHARD JOSEPHBERG earned over \$100,000 between January 1997 and August 1997, which income was not voluntarily disclosed by JOSEPHBERG or his wife to the Bankruptcy Court. In addition, papers filed by JOSEPHBERG's wife in the bankruptcy proceeding indicated that she had no checking, savings, or other financial accounts. In truth and fact, both RICHARD JOSEPHBERG and his wife employed a checking account from Josephberg Grosz & Co. to pay their personal bills, and RICHARD JOSEPHBERG had earned shares of stock in 1997, which shares he directed to be issued in nominee names, that is, the names of his children. After the foregoing false and misleading statements were brought to the attention of the Bankruptcy Court, the bankruptcy petition of RICHARD JOSEPHBERG's wife was dismissed.

21. In or about 1999, RICHARD JOSEPHBERG filed his own bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York. In his petition, which was signed by RICHARD JOSEPHBERG under penalties of perjury, RICHARD JOSEPHBERG made false statements about his assets by failing to disclose his ownership and control over certain bank accounts and stock. In addition, when he gave sworn testimony about his assets in connection with his wife's bankruptcy, RICHARD JOSEPHBERG made certain false and

misleading statements relating to his assets. RICHARD JOSEPHBERG's bankruptcy petition was voluntarily dismissed before any reorganization plan was implemented.

**Statutory Allegations**

22. From in or about November 1995, through the date of the filing of this Indictment, in the Southern District of New York and elsewhere, RICHARD JOSEPHBERG, the defendant, unlawfully, willfully and knowingly did attempt to evade and defeat the payment of a substantial part of the income tax due and owing by JOSEPHBERG to the United States of America for the calendar years 1977 through 1980, and 1983 through 1985, by various means, including, among other things, concealing and attempting to conceal from the IRS the nature and extent of his income and assets by: (a) directing income into accounts of his children and to other third parties; (b) directing income to be paid into the corporate accounts of J.G. Capital, and thereafter directing that income to be used to pay for JOSEPHBERG's personal expenses; (c) making false statements to the IRS in an effort to conceal the nature and extent of his income and assets; and (d) causing bankruptcy petitions to be filed by himself and his wife, resulting in false and misleading claims being made about RICHARD JOSEPHBERG's assets.

(Title 26, United States Code, Section 7201.)

**COUNT TWO**  
(Conspiracy)

The Grand Jury further charges:

23. From in or about 1995 through in or about 2002, in the Southern District of New York and elsewhere, RICHARD JOSEPHBERG, the defendant, together with others known and unknown to the Grand Jury, unlawfully, willfully and knowingly, did combine, conspire,

confederate and agree together to defraud the United States and an agency thereof, to wit, the Internal Revenue Service of the United States Department of Treasury, and to commit offenses against the United States, to wit, violations of Title 26, United States Code, Sections 7201 and 7206, and Title 18, United States Code, Section 1347.

**Objects of the Conspiracy**

24. It was a part and an object of the conspiracy that, during the period 1997 through 2002, RICHARD JOSEPHBERG, the defendant, and others known and unknown, unlawfully, willfully and knowingly would and did defraud the United States of America and the IRS by impeding, impairing, defeating and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of income taxes.

25. It was further a part and object of the conspiracy that, during the period 1997 through 1999, RICHARD JOSEPHBERG, the defendant, and others known and unknown, unlawfully, wilfully and knowingly would and did attempt to evade and defeat a substantial part of the income taxes due and owing by defendant RICHARD JOSEPHBERG for the tax years 1994 through 1998, in violation of Title 26, United States Code, Section 7201.

26. It was further a part and object of the conspiracy that, during the period 1997 through 1999, RICHARD JOSEPHBERG, the defendant, and others known and unknown, unlawfully, wilfully and knowingly would and did make and subscribe certain Individual U. S. Income Tax Returns, Forms 1040, for RICHARD JOSEPHBERG for the tax years 1994 through 1998, which returns contained and were verified by written declarations that they were made under the penalties of perjury, and which RICHARD JOSEPHBERG, the defendant, and others did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code,

Section 7206(1).

27. It was further a part and an object of the conspiracy that, during the period 1997 through 2002, RICHARD JOSEPHBERG, the defendant, and others known and unknown, unlawfully, willfully and knowingly, would and did execute and attempt to execute a scheme and artifice to defraud a health care benefit program, to wit, Oxford Health Plans (“OHP”), and to obtain, by means of false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, OHP, in connection with the delivery of and payment for health care benefits, items and services, in violation of Title 18, United States Code, Section 1347.

**Means And Methods Of The Conspiracy**

28. Among the means and methods by which RICHARD JOSEPHBERG, the defendant, and others known and unknown, would and did carry out the conspiracy were the following:

**A. The Scheme To Defraud The IRS, Evade Taxes, And File False Tax Returns**

\_\_\_\_\_29. During the period 1994 through 1998, RICHARD JOSEPHBERG, the defendant, earned hundreds of thousands of dollars of fees from companies for whom he performed investment banking services. In order to fraudulently offset the substantial tax liability stemming from his receipt of those fees, RICHARD JOSEPHBERG presented to his accountant, a co-conspirator not named as a defendant herein (“the Accountant”), information indicating that RICHARD JOSEPHBERG had Net Operating Losses (“NOLs”) from prior tax years that could be carried forward to his tax returns for the tax years 1994 through 1998. Consequently, on the U. S. Individual Income Tax Returns, Forms 1040, that the Accountant prepared for RICHARD JOSEPHBERG for the tax years 1994 through 1998, the Accountant included NOLs that

substantially reduced or totally offset any tax liability for RICHARD JOSEPHBERG for the tax years 1994 through 1998.

30. As RICHARD JOSEPHBERG and the Accountant well knew and understood, the NOLs that RICHARD JOSEPHBERG presented to the Accountant were either grossly overstated or non-existent, in that the IRS had previously disallowed all or substantially all of the NOLs, which stemmed from JOSEPHBERG's tax shelter activities. Notwithstanding the foregoing, in or about and between July 1997 and September 1999, the Accountant prepared, and RICHARD JOSEPHBERG signed and caused to be filed with the IRS, U.S. Individual Income Tax Returns, Forms 1040, for RICHARD JOSEPHBERG for the tax years 1994 through 1998, that falsely listed the NOLs. As a result of the filing of the materially false tax returns for the years 1994 through 1998, RICHARD JOSEPHBERG fraudulently evaded assessment of significant amounts of United States income taxes.

**B. The Scheme To Defraud OHP**

31. In or about 1997, RICHARD JOSEPHBERG applied to OHP on behalf of JG&Co. for a group health care insurance policy, which OHP wrote for small businesses. Because OHP did not write small-business health care insurance policies for businesses that had just one employee, RICHARD JOSEPHBERG falsely represented to OHP in his application for insurance that his wife was an employee of JG&Co., and that, as a result, she should be included on the particular policy that RICHARD JOSEPHBERG applied to OHP for on behalf of JG&Co. In truth and fact, as RICHARD JOSEPHBERG well knew and understood, his wife was not an employee of JG&Co. As a result of that false representation, OHP provided health insurance coverage to the RICHARD JOSEPHBERG, his wife, and their children under the JG&Co. insurance policy, which

health insurance coverage would have been more expensive had RICHARD JOSEPHBERG and his wife purchased that coverage under a non-business plan, or had RICHARD JOSEPHBERG's wife purchased that coverage in her individual capacity.

32. In or about 1998, OHP requested RICHARD JOSEPHBERG to provide documentary proof that his wife was a legitimate employee of JG&Co. and thus entitled to be included on JG&Co.'s group health insurance policy. After receiving OHP's request, RICHARD JOSEPHBERG approached the Accountant and requested the Accountant to prepare a document falsely indicating that his wife was an employee of JG&Co. The Accountant agreed and thereafter prepared a Schedule C to a U. S. Individual Income Tax Return, Form 1040, for RICHARD JOSEPHBERG for the 1997 tax year, which Schedule C falsely indicated that RICHARD JOSEPHBERG, as proprietor of JG&Co., had deducted \$12,000 as a result of JG&Co.'s employment of his wife during the year 1997. RICHARD JOSEPHBERG thereafter caused the false Schedule C to be sent to OHP on or about September 23, 1998. On or about October 15, 1998, RICHARD JOSEPHBERG caused to be sent to OHP another copy of the false Schedule C, together with a New York State employer tax form, which form falsely and fraudulently reflected that RICHARD JOSEPHBERG's wife was a wage-earning employee of JG&Co..

33. As a result of the false Schedule C and false employer tax form sent to OHP by RICHARD JOSEPHBERG, OHP continued to include the wife of RICHARD JOSEPHBERG as a person covered under the JG&Co. health insurance plan. For the years 1998 through 2002, RICHARD JOSEPHBERG fraudulently continued his wife on the JG&Co. health insurance plan with OHP and caused checks to be sent to OHP as payment for coverage under the JG&Co. policy. OHP, in turn, sent to RICHARD JOSEPHBERG certain materials relating to coverage under the

JG&Co. policy.

**Overt Acts**

34. The following overt acts, among others, were committed and caused to be committed, in the Southern District of New York and elsewhere, by RICHARD JOSEPHBERG, the defendant, and his co-conspirators in furtherance of the conspiracy and to effect its objects:

a. On or about July 17, 1997, RICHARD JOSEPHBERG caused to be filed with the IRS U. S. Individual Income Tax Returns, Forms 1040, for himself for the tax years 1994 through 1996, each of which tax return contained an NOL of in excess of \$1,500,000.

b. In or about September 1998, RICHARD JOSEPHBERG had a conversation with the Accountant relating to health insurance coverage for RICHARD JOSEPHBERG's wife.

c. On or about September 23, 1998, RICHARD JOSEPHBERG caused a false and fictitious Schedule C to be sent to OHP via United States mail.

d. On or about October 15, 1998, RICHARD JOSEPHBERG caused a false and fictitious Schedule C and a false and fictitious New York State employer tax form to be sent to OHP via Federal Express.

e. On or about September 30, 1999, RICHARD JOSEPHBERG caused to be filed with the IRS U. S. Individual Income Tax Returns, Forms 1040, for himself for the tax years 1997 and 1998, each of which tax return contained an NOL of in excess of \$1,280,000.



**COUNTS THREE AND FOUR**  
(Tax Evasion — 1997 and 1998 Tax Years)

The Grand Jury further charges:

35. Paragraphs 1 through 3, and 29 through 30 of this indictment are realleged and incorporated by reference as though fully set forth herein.

36. During the 1997 and 1998 tax years, RICHARD JOSEPHBERG employed a domestic employee, who performed housekeeping duties and also served as a nanny for his child. As such an employer, RICHARD JOSEPHBERG was required to report to the IRS the wages he paid to his employee, and was also required to remit to the IRS certain amounts for, among other things, FICA and Medicare taxes. Rather than fulfilling these reporting and tax payment obligations, RICHARD JOSEPHBERG paid his employee in cash and failed to remit to the IRS any FICA and Medicare taxes.

37. From on or about January 1 of each of the calendar years set forth below, through on or about the filing dates set forth below for each said calendar year, in the Southern District of New York and elsewhere, RICHARD JOSEPHBERG, the defendant, unlawfully, wilfully and knowingly did attempt to evade and defeat a substantial part of the income and employment taxes due and owing by RICHARD JOSEPHBERG to the United States of America for the calendar years 1997 and 1998 by various means, including, among others, (a) paying his domestic employee in cash and failing to remit to the IRS the FICA and Medicare tax payments that were due and owing, and (b) preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed with the IRS, false and fraudulent U. S. Individual Income Tax Returns, Forms 1040, for the calendar years 1997 and 1998, which returns falsely claimed net operating losses in the

amounts set forth below and falsely omitted RICHARD JOSEPHBERG's household employment tax obligations, which falsities caused RICHARD JOSEPHBERG to substantially understate his taxable income and tax due and owing each year, as set forth below:

COUNT	TAX YEAR	FILING DATE	NOL CLAIMED	TAXABLE INCOME PER RETURN	TAX DUE PER RETURN	CORRECTED TAXABLE INCOME	CORRECTED TAX DUE
3	1997	09/30/99	\$1,534,457	(\$1,330,222)	\$14,267	\$218,526	\$89,208
4	1998	09/30/99	\$1,280,222	(\$1,108,692)	\$13,583	\$180,330	\$73,045

(Title 26, United States Code, Section 7201.)

**COUNTS FIVE AND SIX**  
 (Subscribing to False Individual Income  
 Tax Returns — 1997 and 1998 Tax Years)

The Grand Jury further charges:

38. On or about September 30, 1999, in the Southern District of New York and elsewhere, RICHARD JOSEPHBERG, the defendant, unlawfully, wilfully and knowingly did make and subscribe U. S. Individual Income Tax Returns, Forms 1040, for the tax years set forth below, which returns contained and were verified by the written declaration of RICHARD JOSEPHBERG that they were made under penalties of perjury, and which returns RICHARD JOSEPHBERG did not believe to be true and correct as to every material matter, in that RICHARD JOSEPHBERG, the defendant, (a) claimed net operating losses in the amounts set forth below and (b) omitted household employment tax obligations, whereas RICHARD JOSEPHBERG then and there well knew and believed that he was not entitled to claim those losses and omit those tax obligations:

COUNT	TAX YEAR	NET OPERATING LOSS CLAIMED
5	1997	\$1,534,457
6	1998	\$1,280,222

(Title 26, United States Code, Section 7206(l).)

**COUNTS SEVEN THROUGH TEN**

(Failure to File Individual Income Tax Returns — 1999-2002 Tax Years)

The Grand Jury further charges:

39. On or about the return due dates set forth below, in the Southern District of New York, RICHARD JOSEPHBERG, the defendant, unlawfully, willfully, and knowingly did fail to make an income tax return for the calendar years stated below, to the District Director of the Internal Revenue Service for the Internal Revenue District of Manhattan, or to the Director, Internal Revenue Service Center, Holtsville, New York, or to any other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled, whereas, as RICHARD JOSEPHBERG, the defendant, then and there well knew and believed, he had gross income of in excess of \$100,000 for each of such years, and, by reason of such income, he was required by law following the close of each calendar year, and on or before each of the return due dates stated below, to make said income tax returns to said District Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to said proper officers:

COUNT	TAX YEAR	DUE DATE OF INCOME TAX RETURN
7	1999	10/15/00
8	2000	08/15/01
9	2001	10/15/02
10	2002	04/15/03

(Title 26, United States Code, Section 7203.)

**COUNTS ELEVEN THROUGH FIFTEEN**  
(Failure to Pay Tax —1999-2003 Tax Years)

The Grand Jury further charges:

40. On or about the dates set forth below, in the Southern District of New York, RICHARD JOSEPHBERG, the defendant, unlawfully, willfully, and knowingly did fail to pay, at the time and times required by law and regulation, the income tax due for the calendar years stated below, in the amounts set forth below, to the District Director of the Internal Revenue Service for the Internal Revenue District of Manhattan, or to the Director, Internal Revenue Service Center, Holtsville, New York, or to any other proper officer of the United States, whereas, as RICHARD JOSEPHBERG, the defendant, then and there well knew and believed, he had taxable income in excess of \$100,000 for each of such years, on which taxable income there was due and owing to the United States of America an income tax in the amounts set forth below, which income tax he was required to pay, at the time and times required by law and regulation, to the District Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to said proper officers:

COUNT	TAX YEAR	DATES OF FAILURE TO PAY	AMOUNTS DUE TO IRS
11	1999	10/15-00 - 04/16/02	\$125,978
12	2000	08/15/01 - 04/16/02	\$153,043
13	2001	10/15/02 - 06/13/04	\$135,837
14	2002	04/15/03 - 06/13/04	\$132,719
15	2003	04/15/04 - 06/14/04	\$ 59,037

(Title 26, United States Code, Section 7203.)

**COUNT SIXTEEN**

(Obstructing And Impeding The Due Administration  
Of The Internal Revenue Laws)

\_\_\_\_\_ The Grand Jury further charges:

41. The allegations in paragraphs 1 through 21, 29-30, 36, and 39-40 of this Indictment are repeated and realleged as though fully set forth herein.

42. From in or about January 1996, through and July 2004, in the Southern District of New York and elsewhere, the defendant, RICHARD JOSEPHBERG, did corruptly obstruct and impede, and endeavor to obstruct and impede, as set forth above, the due administration of the Internal Revenue Laws.

(Title 26, United States Code, Section 7212(a).)

**COUNT SEVENTEEN**

(Health Care Fraud)

The Grand Jury further charges:

43. Paragraphs 1 through 3, and 31 through 33 of this indictment are realleged and incorporated by reference as though fully set forth herein.

44. Between in or about 1997 and 2002, in the Southern District of New York and elsewhere, RICHARD JOSEPHBERG, the defendant, unlawfully, willfully and knowingly, did execute and attempt to execute a scheme and artifice to defraud a health care benefit program, to wit, Oxford Health Plans, and to obtain, by means of false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, OHP, in connection with the delivery of and payment for health care benefits, items and services, to wit, RICHARD JOSEPHBERG falsely represented to OHP that his wife was an employee of JG&Co. in order to obtain health insurance coverage under a business health care plan offered by OHP.

(Title 18, United States Code, Sections 1347 and 2.)

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FOREPERSON

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DAVID N. KELLEY  
United States Attorney