HOUSE WAYS AND MEANS COMMITTEE

SUBCOMMITTEE ON OVERSIGHT

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Testimony of Jeffrey Hirsch

Good morning, Chairman Roskam, and members of the Committee. I am pleased to be with you today, and to have this opportunity to tell you about my treatment at the hands of the IRS. My case is over now, but Americans deserve to know what the IRS is up to. No other American should be put through the nightmare I experienced.

For twenty-seven years, I have operated Bi-County Distributors, Inc., a small business that distributes candy, food, cigarettes, and other products to convenience stores on Long Island. When I was growing up, my father worked in convenience-store distribution, and I learned about the business from him. Today, my brothers Richard and Mitchell are also partners in the business. Every weekday, we load up our vans with products for convenience stores, and I personally drive a van on a delivery route through Suffolk and Nassau Counties. I often work eleven-hour days to keep the business going.

The IRS seized almost half a million dollars from my business. It then held that money for over two-and-a-half years without charging me with any wrongdoing and without giving me any opportunity to make my case before a judge. The IRS's conduct drove my business to the edge of insolvency. In fact, my business would not have survived if longtime business partners had not lent us extraordinary credit. Then, after holding my money for years, the IRS returned the money—still without having ever alleged *any* wrongdoing by me, my brothers, or anyone else associated with my business. The IRS did not

apologize, did not pay interest on the money, and did not compensate me for the tens of thousands of dollars that I spent to get my money back.

The Seizure

On May 21, 2012, when I went to the bank to deposit money in my business's bank account, I was told by the teller that the entire contents of the account had been seized by the IRS. The account contained $446,651.11. This was the first time I learned that I had been targeted by the IRS. I received no advance warning that my bank account might be seized, and nobody from the government asked me any questions or spoke to me about my banking practices prior to the seizure.

The next day, on May 22, 2012, I received a copy of a seizure warrant. The warrant stated that my money had been seized because my brothers and I allegedly engaged in "structuring" by depositing cash in the bank in amounts under $10,000. Prior to reading the warrant, I had never heard of the concept of "structuring" and had no idea that depositing cash in amounts under $10,000 could ever be against the law.

Convenience-store distribution is, by its nature, a cash-intensive business, as convenience stores often pay for inventory with cash. Over the years, I had a number of banks close the business's bank accounts with little warning or explanation. My accountant advised me that banks find frequent cash deposits burdensome in part because of paperwork burdens associated

with deposits over $10,000. My accountant advised that my brothers and I should keep our cash deposits under $10,000 to minimize the burden on our bank and to avoid having our accounts closed in the future.

Because I was eager to explain the motivation for my banking practices to the government, I reached out to the officer who had sworn the affidavit accompanying the warrant—Michael Kearns, a Nassau County detective who was identified in the affidavit as a member of the "New York Asset Forfeiture Task Force of the U.S. Internal Revenue Service." I invited Mr. Kearns to come visit my business to talk about the reasons for our banking practices and the reasons why the money had been seized. Mr. Kearns, however, refused even to meet with me.

The Government's Fishing Expedition

Shortly after the seizure, I retained a local attorney, who took steps to initiate a meeting with federal authorities. A meeting finally occurred on October 25, 2012, five months after the seizure, and was attended by my attorney and by Assistant U.S. Attorney Diane Beckmann, as well as other unknown government officials.

It was my impression that government officials, during the meeting, were fishing for information about my business in an attempt to find some after-the-fact justification for having seized the money. At one point during the meeting, the participants called me on the phone and asked a number of

questions about my banking practices. In particular, I was asked a number of questions about why my brothers and I deposit endorsed third-party checks in the business's account. I explained that convenience stores often pay for inventory using checks that have been endorsed to them by their customers, and that we accept those checks as payment and deposit them in our account. There is nothing unlawful about that practice. It was clear to me from their tone and the questions that they asked that the government officials knew next to nothing about my particular business or the way my industry worked.

Although the government did not make any allegation of wrongdoing after the October 2012 meeting, the government still was unwilling to return the money. So, in the summer of 2013, my attorney suggested that we hire a forensic accounting firm to audit the business in order to demonstrate our innocence to the government and avoid ruinously expensive litigation. At a cost of over $25,000, we hired a well-established Manhattan CPA firm, Baker Tilly, to audit the business over a period of 18 months prior to the seizure.

Baker Tilly gave the business a clean bill of health. They found that Bi-County reported all third-party checks and cash on its federal tax return, and they found no basis to believe that my brothers or I had purposefully sought to circumvent laws requiring reporting of cash transactions.

My attorney and I presented the results of the Baker Tilly audit to the government in the summer of 2013. Government officials did not question the

results of the audit and did not suggest that they were in possession of any evidence of wrongdoing by anyone associated with the business. Nonetheless, the government still refused to return the money.

Over the following year, the government contacted me on two occasions to propose a settlement under which I would agree to forfeit a substantial portion of the money to the government. I rejected these offers, as I felt that I had done nothing wrong and should not be forced to give up my hard-earned money for no reason.

Finally, on July 25, 2014, approximately two years after the initial seizure, I received notice that the IRS was auditing my business's 2012 income-tax return. That audit is still ongoing. In my nearly 28 years in business, I had never before been audited.

The Impact Of The Seizure

Having our business's entire bank account seized by the government was a devastating experience.

The money that was in the account was money that was needed to pay vendors, bills, and other expenses necessary to keep the business operating. Convenience-store distribution is a low-margin business; almost all the cash that we receive from convenience stores is used to pay our vendors, with only a small amount retained as profit. As a result, the majority of the money seized from the account was money that we owed to our business partners.

Our business has been able to survive the loss of this money, but only thanks to the generosity of our vendors. We have worked with many of our vendors for decades; some also worked with my father. Our vendors have been willing to lend us an extraordinary amount of credit on the basis of that relationship. However, extending so much credit for so many years has created a substantial hardship for our vendors.

Being forced to ask for such a favor has also been embarrassing for me as a business owner. In all the years that I had been in this business, I had never before bounced a check. It was extraordinarily difficult to be forced to explain to friends and business partners that the business had suddenly been driven to the edge of financial ruin. Even friends and long-time business associates looked at me as though I may have been guilty of something for the IRS to have seized my money.

Being deprived of the business's working capital has also made the day-to-day operation of the business substantially more difficult. We have been forced to keep less inventory immediately on hand, and, as a result, I have had to work harder, for longer hours, to keep my customers satisfied.

The stress of fighting to keep my business running—while also dealing with a government seemingly determined to find any possible justification for taking my business's money—is an experience I would not wish on anyone. Yet I lived with that stress for over two-and-a-half years.

The Return Of The Money

In Fall 2014, I teamed up with the Institute for Justice, a non-profit public interest law firm that litigates around the country to protect property rights. On October 16, 2014, we filed a case in federal court demanding that the IRS return the money it had seized.

That lawsuit attracted significant attention in the national press. It was featured in a front-page story in the *New York Times* and in an editorial in the *Wall Street Journal*. The public reaction to news of my case was harshly critical of the IRS.

Rather than defend its actions in court, the IRS opted to return all of the money that it seized from my business. On January 20, 2015, a full 974 days after the IRS seized my bank account, the government filed with the court a "Stipulation and Proposed Order of Settlement" promising to return the money. In the stipulation, the government acknowledged that "neither Bi-County nor its employees has been charged with any crime in connection with the Seized Funds." We hope the money will be back in our account soon.

Although the government agreed to return the money, the government will not undo the harm it has caused. The government will not pay interest on the money, although it held the money for over two-and-a-half years. The government also will not reimburse the money that I spent to get my money

back—including approximately $25,000 that I paid in fees to my first attorney and over $25,000 that I paid to obtain a forensic audit.

It is gratifying that the government has finally agreed to return my money, but it is also bittersweet. After putting me through the wringer for over two-and-a-half years, the government has been able to walk away from the case without suffering any real consequences. The government turned my life upside down for no apparent reason, and yet the government has never even apologized for its conduct.

Conclusion

No American should have to endure the treatment that I received at the hands of the IRS. Rather than investigate *before* taking my business's entire bank account, the IRS seized the account and then conducted a two-and-a-half year fishing expedition *after* the seizure in an attempt to find some justification for its actions. Ultimately, finding nothing, the government returned the money—without any compensation for the hardship caused by the seizure and without even an apology.

In this country, people are supposed to be innocent until proven guilty. But, in the eyes of the IRS, I was guilty until proven innocent—forced to prove my own innocence to get my property back. I hope that, by bringing my experience to the attention of this committee, I can prevent other Americans from being treated the same way.

Thank you for the opportunity to testify.