

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 10-cr-00282-MSK-01

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. SCOTTIE J. EWING,

Defendant.

**PLEA AGREEMENT AND STATEMENT OF FACTS
RELEVANT TO SENTENCING**

The United States, by and through Matthew T. Kirsch, Assistant United States Attorney for the District of Colorado, and the defendant, Scottie J. Ewing, personally and by counsel Daniel J. Sears, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to D.C.COLO.LCrR 11.1.

I. PLEA AGREEMENT

1. The defendant will plead guilty to Count 1 of the Information, charging him with tax evasion, in violation of Title 26, United States Code, Section 7201. The defendant agrees to execute a separate, written waiver of his right to indictment on this charge.

2. The defendant agrees to pay the \$100 special monetary assessment applicable to Count 1 at or before the time of sentencing.

3. The defendant agrees to pay restitution to the Internal Revenue Service ("IRS") in the amount of all taxes, interest, and penalties due and owing from 2001

COURT
EX. 1

forward. The defendant also agrees to file complete and accurate tax returns for the years 2001-2006 and for 2009. The defendant agrees to cooperate with the IRS in its civil examination, determination, assessment, and collection of income taxes related to his income tax returns and any related corporate/entity tax returns, and further agrees not to conceal or transfer for no consideration any funds or property that could be used to satisfy such taxes, penalties, and interest. The defendant agrees to provide the IRS any documentation in the defendant's possession and/or control requested by the IRS in connection with its civil examination, determination, assessment, and collection of such income taxes prior to sentencing.

4. The defendant agrees to give his complete cooperation during the investigation and prosecution of any criminal charges or during any administrative proceedings, including but not limited to meeting with government investigators or prosecutors at reasonable times and as often as they deem necessary, appearing voluntarily and providing truthful testimony at any grand jury, trial, or other proceeding when requested, providing investigators with his current address and phone number until any related proceedings are concluded, and providing documents or items within his possession or control when requested.

5. The United States Attorney's Office for the District of Colorado (the government) agrees that it will file no other federal criminal charges against the defendant based on matters currently known to the government or offenses based upon information provided by the defendant pursuant to this agreement, except under the circumstances described below.

6. The government agrees that any information and testimony given by the

defendant pursuant to this agreement will not be used against him, either directly or indirectly, in any criminal case except for prosecutions for perjury, making a false statement, or obstruction of justice, or for impeachment. Information and testimony given by the defendant also will not be used against him pursuant to Section 1B1.8 of the Sentencing Guidelines. Any information and testimony relating to the defendant's involvement in crimes of violence, based on the common law definition of that term, is excluded from this agreement.

7. The defendant agrees that if the government can show that he intentionally lied or attempted to mislead the government or law enforcement authorities, or if he intentionally does not fulfill the terms of or does not complete his cooperation under this agreement, then any information or testimony which he has given in connection with this case can be used in any prosecution against him, notwithstanding the provisions above. If the government alleges such conduct, it will have the burden of establishing the alleged conduct at a separate hearing by a preponderance of the evidence.

8. Provided that the defendant continues to fully and truthfully cooperate with the government as described above, as determined in the government's sole discretion, the government agrees that it will file, before or at the time of the defendant's sentencing, a motion for downward departure, pursuant to Section 5K1.1 of the Sentencing Guidelines and Title 18, United States Code, Section 3553(e), recommending that the Court grant a downward departure of 3 levels and sentence the defendant to a term of imprisonment of time served, followed by 3 years of supervised release, with a special condition that the defendant be subject to 6 months of home

detention. In light of the defendant's agreement to satisfy all outstanding tax liabilities, the government further agrees to recommend that the sentence not include a fine nor impose costs of prosecution.

9. The government agrees that it will file a motion for the defendant to receive an additional 1-level reduction for acceptance of responsibility, pursuant to Section 3E1.1(b) of the Sentencing Guidelines, provided that the defendant's adjusted offense level is at least 16.

10. The parties agree that this plea agreement is contingent upon its approval by the United States Department of Justice - Tax Division.

11. This plea agreement is made pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. The parties agree that the sentencing provisions described in paragraphs 3 and 8 above would be components of a sentence that is an appropriate disposition of the case.

II. ELEMENTS OF THE OFFENSES

12. The defendant understands that in order to prove his guilt as to Count 1, the government must prove, beyond a reasonable doubt, that:

- A. The defendant owed substantial income tax;
- B. The defendant intended to evade and defeat the payment of that additional tax;
- C. The defendant committed an affirmative act in furtherance of this intent, as set forth in the Information; and
- D. The defendant acted willfully, that is, with the voluntary intent to

violate a known legal duty.¹

III. MAXIMUM STATUTORY PENALTIES

13. The maximum statutory penalty for the offense in Count 1 is: not more than five years of imprisonment, a fine of not more than the greater of \$250,000 or twice the gain or loss from the offense, or both; the costs of prosecution; not more than 3 years of supervised release, and; a \$100 special assessment fee, plus restitution.

14. The convictions may also cause the loss of certain civil rights, such as the right to possess firearms, to vote, to hold elective office, and to sit on a jury.

15. A violation of the conditions of probation or supervision may result in a separate prison sentence.

IV. STIPULATION OF FACTUAL BASIS AND FACTS

RELEVANT TO SENTENCING

16. The parties agree that there is no dispute as to the material elements which establish a factual basis for the offense of conviction.

17. Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties stipulate are relevant, pursuant to §1B1.3, for computing the appropriate guideline range.

18. The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the guideline computation (§1B1.3) or to sentencing in general (§1B1.4). Nor is the Court or Probation precluded from the consideration of

¹See *Tenth Circuit Pattern Jury Instructions (Criminal Cases)*, 2006, § 2.92; *United States v. Anderson*, 319 F.3d 1218, 1219 (10th Cir. 2003).

such facts. In "determining the factual basis for the sentence, the Court will consider the stipulation [of the parties], together with the results of the presentence investigation, and any other relevant information." (§6B1.4 Comm.)

19. The parties agree that the government's evidence would show that the date on which conduct relevant to the offense (§1B1.3) began is approximately January 1, 2004.

20. The parties agree that the government's evidence would be:

Throughout 2004 and continuing until approximately May of 2005, the defendant, Scottie J. Ewing, operated a prostitution business known as both Denver Sugar and Denver Players ("Sugar/Players"). In January, 2004, Mr. Ewing filed articles of organization with the Colorado Secretary of State for an entity called Syndicate Media and Consulting, LLC ("Syndicate"). At the same time, Mr. Ewing opened a bank account in Syndicate's name at Community Banks of Colorado. Syndicate was used to conduct business operations such as banking, processing credit card transactions, issuing payments to prostitutes working for the business, and making payments for advertising purchased on behalf of Sugar/Players. Mr. Ewing also used Syndicate as a means to hide the source and true amount of his income from the IRS.

Customers of Sugar/Players were charged approximately \$300/hour. Mr. Ewing received roughly one-third of these fees, and the individual prostitutes received approximately two-thirds. Mr. Ewing was also aware that cash income was difficult for the IRS to track and intentionally failed to report such income to the IRS.

In approximately May, 2005, Mr. Ewing arranged to sell Sugar/Players to a previous employee of the company. The terms of the sale agreement required the new

purchaser to assume control of the business in May, 2005, but to pay Mr. Ewing approximately \$150,000 in cash for the business. The parties agreed that the source of these payments would be future cash receipts from Sugar/Players. Mr. Ewing received payments, primarily in cash but also through two personal checks, through May of 2006. Mr. Ewing gave the purchaser advice about how to set up several aspects of the business, including the creation and use of a separate front company. He also agreed that the new purchaser could continue to use the existing Sugar/Player telephone lines.

During 2005, Mr. Ewing had an adjusted gross income of approximately \$284,166, which included receipts from the operation and/or sale of Sugar/Players and capital gains based on the sale of real estate. After applicable deductions, Mr. Ewing had a tax liability for 2005 of \$52,883. Mr. Ewing did not timely file tax returns for the years 2001-2006. For sentencing guideline purposes, Mr. Ewing's total tax liability for the year 2004 is \$20,365, and for the year 2006, it is \$4,366.

IV. SENTENCING COMPUTATION

21. The parties' estimated guideline application is:
 - A. The base guideline is U.S.S.G. §2T1.1(a)(1), with a base offense level of 14 because the offense involved tax loss in excess of \$30,000.
§2T4.1(E).
 - B. A 2-level enhancement applies because the defendant failed to report income exceeding \$10,000 from criminal activity. §2T1.1(b)(1). There are no other specific offense characteristic enhancements.
 - C. There are no Chapter 3 adjustments.
 - D. The adjusted offense level for Count 1 is therefore 16.

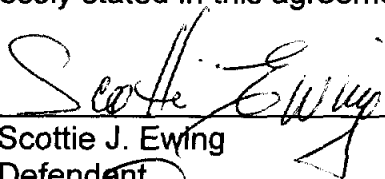
- E. The defendant should receive a 3-level reduction for acceptance of responsibility. §§3E1.1(a) & (b). The resulting offense level would therefore be 13.
- F. The parties understand that the defendant's criminal history computation is tentative and that the criminal history category is determined by the Court. The defendant appears to have no criminal history and therefore appears to be in Criminal History Category I.
- G. The career offender/criminal livelihood adjustments do not apply.
- H. The guideline range resulting from the estimated offense level of (E) above, and the tentative criminal history category of (F) above, is 12-18 months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the estimated offense level of (I) above could conceivably result in a range from 12 months (bottom of Category I) to 41 months (top of Category VI).
- I. Assuming the estimated offense level of (E) above, the fine range for these offenses is \$3,000 to \$250,000, plus applicable interest and penalties. §5E1.2(c)(3).
- J. Pursuant to guideline §5D1.2, if the Court imposes a term of supervised release, that term shall be at least 2 years but not more than 3 years.
- K. Pursuant to guideline §5E1.1(a)(1), the Court shall enter a restitution order for the full amount of the IRS's loss.

V. WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE

22. The parties believe the sentencing range resulting from the proposed plea agreement is appropriate because all relevant conduct is disclosed, the sentencing guidelines take into account all pertinent sentencing factors with respect to this defendant, and the charge to which the defendant has agreed to plead guilty adequately reflects the seriousness of the actual offense behavior.

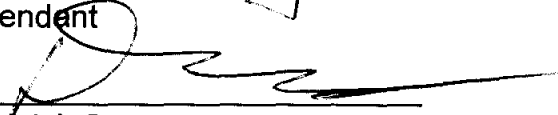
23. This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the United States nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

9/16/10
Date



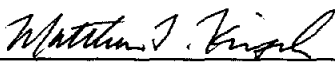
Scottie J. Ewing
Defendant

9/16/10
Date



Daniel J. Sears
Attorney for Defendant

9/16/2010
Date



Matthew T. Kirsch
Assistant U.S. Attorney