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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR-04-0166-MHP
	)	
Plaintiff,	)	PLEA AGREEMENT
	)	
v.	)	
	)	
JOEL MOMSEN,	)	
	)	
Defendant.	)	
	)	

I, Joel Momsen, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to count two of the captioned indictment charging me with submitting a false Collection Information Statement, Form 433A, to the Internal Revenue Service, in violation of 26 U.S.C. § 7206(1).

2. I agree that the elements of the offense are as follows: (a) the submission to the Internal Revenue Service of a statement which was false as to a material matter; (b) the statement contained a written declaration that it was made under the penalty of perjury; (c) the defendant did not believe that statement was true and correct as to every material matter; and (d) the defendant did so knowingly and willfully.

3. I agree that the maximum penalties are as follows:

a.	Maximum prison sentence	3 years
b.	Maximum fine	$100,000
c.	Maximum supervised release term	3 years
d.	Mandatory special assessment	$100
e.	Restitution	$203,401.68, due as of December 1, 2004, plus accruing interest

4. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

5. I am a Certified Public Accountant and have been licensed in the State of California since 1974.

6. During the years 1991 through 1993 I operated my own accounting business and incurred unpaid payroll tax liabilities.

7. In October 1995 to avoid the sale by the IRS of my residence at 2507 Rollingwood Drive, Napa, California in order to satisfy my unpaid tax liabilities, I sold my residence to Jenifer Jekel, an unrelated third party. We entered into an agreement whereby he purchased the property from me for $210,000. She agreed to lease the house back to me for

$1,600 a month and that at a later date I would repurchase the property back from her for $215,000. The IRS received approximately $78,000 from the sale of the property, which was not sufficient to pay in full the taxes owed by me.

8. The house was repurchased by me from Jekel in December 1997 for $215,000 and the title to the property was put in my mother's name, Angelina Momsen, as my nominee.

9. In February 2001 I submitted a false Form 433-A to the Collection Division of the IRS under the penalty of perjury in order to compromise my unpaid tax liabilities. I failed to include my residence located at 2507 Rollingwood Drive in Napa, California as an asset.

10. I knew the Collection Information Statement was false as to a material matter when I submitted it to the Collection Division and did not include my residence as an asset.

11. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence. To the extent that I have a right to have facts that are used to determine the sentence (including any Sentencing Guideline factors, upward adjustments, or upward departures) charged in the indictment by the grand jury and found by a jury at trial beyond a reasonable doubt (see Blakely v. Washington, 124 S. Ct. 2531 (2004)), I waive those rights and agree that the Court will find the facts that enhance my sentence by a preponderance of the evidence.

12. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal my sentence.

13. I agree not to file any collateral attack on my conviction(s) or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated

14. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered, unless the Court declines to accept the sentence agreed to by the parties. I agree that the government may withdraw from this agreement if the Court does not accept the agreed upon sentence set out below.

15. I agree that my sentence should be calculated pursuant to the Sentencing Guidelines as follows, and that I will not ask for any other adjustment to or reduction in the offense level or for a downward departure of any kind:

a.	Base Offense Level, U.S.S.G. §§ 2T1.1 and 2T4.1:	11
b.	Amount of tax loss:	$19,394.11
c.	Acceptance of responsibility: (If I meet the requirements of U.S.S.G. § 3E1.1)	- 2
d.	Adjusted Offense Level	9
e.	Sentence	1 year of probation, including 4 months home detention pursuant to U.S.S.G. § 5C1.1(c)(3)
f.	Amount of Restitution December 1, 2004.	$203,401.68 due as of

16. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay but I shall have the right to pursue with either the IRS or U.S. Attorney's Office an installment agreement or an offer in compromise if I am unable to pay these amounts. Before or after sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate and complete financial information, submit sworn statements and give depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and release funds and property under my control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of

sentencing.

17. I agree not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release (if any); intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other promises I have made in this Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises in this agreement, including those set forth in paragraphs 20 through 23 below, but I will not be released from my guilty plea(s).

18. I agree that this Agreement contains all of the promises and agreements between the government and me, and I will not claim otherwise in the future.

19. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District of California only, and does not bind any other federal, state, or local agency.

The Government's Promises

20. The government agrees to move to dismiss any open charges pending against the defendant in the captioned indictment at the time of sentencing.

21. The government agrees not to file or seek any additional charges against the defendant that could be filed as a result of the investigation that led to the captioned indictment.

22. The government agrees to recommend the Guideline calculation set out above in paragraph 15.

23. The government agrees that the sentence set forth in paragraph 15 is the appropriate disposition of this case.

The Defendant's Affirmations

24. I confirm that I have had adequate time to discuss this case, the evidence, and this

Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

25. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

30. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

Dated: 12/30/04

JOEL MOMSEN
Defendant

KEVIN V. RYAN
United States Attorney

Dated: 1/5/2005

FOR JAY R. WEILL
Assistant United States Attorney
Chief, Tax Division

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: Jan. 4, 2005

RICHARD SIDEMAN
Attorney for Defendant