

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

HOWARD J. CAIN

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CRIMINAL NO. 08-__

GOVERNMENT'S GUILTY PLEA MEMORANDUM

I. INTRODUCTION

The government has filed an information charging defendant Howard J. Cain with one count of income tax evasion, in violation of 26 U.S.C. § 7201. The charges arise from defendant Cain's willful failure to report any of his income to the IRS, his willful failure to pay any federal income taxes, and his willful failure to file any federal income tax returns during the years 1991 through 2006. The total amount of unreported income that the government was able to determine for the years 1997 through 2006 is \$1,618,926, and the unpaid federal taxes owed based on that amount is \$411,303 for that same period.

II. PLEA AGREEMENT

The defendant has agreed to plead guilty to the charge in a written plea agreement, a copy of which is attached to this memorandum.

III. ESSENTIAL ELEMENTS OF THE OFFENSE

Tax Evasion (Count One)

To establish a violation of 26 U.S.C. § 7201, the government must prove the following essential elements beyond a reasonable doubt:

1. An attempt to evade or defeat a tax or the payment of tax;
2. An additional tax due and owing; and
3. The defendant acted willfully.

Willfulness is defined as a voluntary, intentional violation of a known legal duty. United States v. Bishop, 412 U.S. 346, 360 (1973); Cheek v. United States, 498 U.S. 192, 196 (1991). This requires proof that the defendant was aware of his obligations under the tax laws. Willfulness is determined by a subjective standard, and the defendant is not required to have been objectively reasonable in his misunderstanding of his legal duties or belief that he was in compliance with the law.

IV. MAXIMUM PENALTIES

The Court may impose the following statutory maximum sentence:

Tax evasion, in violation of 26 U.S.C. § 7201: A violation of 26 U.S.C. § 7201 carries a maximum term of imprisonment of 5 years, a \$250,000 fine, three years of supervised release, and a \$100 special assessment.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original

term of imprisonment may be increased by up to 3 years per count of conviction in the case of Class B felonies. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

V. FACTUAL BASIS OF GUILTY PLEA

If the case were to proceed to trial, the government would introduce evidence to support the following facts:

A. Background

On or about August 15, 1978, defendant Howard J. Cain created a Pennsylvania corporation that he named "Venture Analysis, Inc." Cain markets and operates this business as Venture Analysis, Inc., and is the only corporate officer. VAI engages in political consulting, campaign management, campaign consulting, and press relations. As principal of Venture Analysis, Inc., Cain has overseen all areas of political campaigns including strategic planning, development and placement of advertising, field organization, and volunteer coordination. Overall, he has been involved in more than 80 campaigns ranging from campaigns for the United States Senate, numerous state legislatures, county executive positions, and township supervisor boards.

During the years relevant to the Information, Cain's largest source of income derived from contracts with the Senate Democratic Appropriations Committee

("SDAC"), of which Senator Vincent J. Fumo was chairman. Cain received his first such contract in or about 1985, and then entered a new contract every year thereafter, through 2006. The 1999 contract provided:

To purchase the services of Howard J. Cain to provide analysis and advise Committee staff and the Chairman on issues pertinent to the City of Philadelphia and other local government bodies relating to their operations. Interact with community organizations in regard to the impact of government finance on these organizations. Provide liaison with elected and appointed officials, as well interact with business community. Attend meetings from time to time in this regard with Chairman and other staff. Provide analysis on such other projects as the Chairman and Executive Director requests.¹

Defendant Cain entered into similar contracts with the SDAC from 1999 through 2003. The contract changed in 2004 (after a federal criminal investigation concerning Fumo became known to Fumo), and a more extensive letter agreement was also attached. The attachment likewise detailed services which Cain was purportedly to provide to the SDAC, all relating to matters properly within the purview of the state legislature.²

¹ All of the quoted language, including punctuation, spelling and grammar, are exactly as it appears in the original contract.

² In exchange for the compensation provided by the Senate, Cain extensively engaged in political campaign work at the direction and on behalf of Senator Fumo. This represented a fraud on the Senate, which by law may not expend funds for the personal and campaign benefit of its members. This misconduct is the subject of an other crimes stipulation that is part of the guilty plea agreement in this case. Specifically, paragraph 9(c) of the attached guilty plea agreement states as follows:

Other Crimes Stipulation: In addition to the offense of conviction, the parties stipulate and agree that the defendant, in violation of 18 U.S.C. § 371, engaged in a conspiracy with Vincent J. Fumo and others to defraud the Senate of

Cain's Senate contracts provided him with substantial annual compensation during the years 2000 through 2006, as follows:

2000: \$73,500
2001: \$75,000
2002: \$75,000
2003: \$80,000
2004: \$80,000
2005: \$80,000
2006: \$88,000

During the years 1997 through 2006, defendant Cain also received income from a variety of other public and private sources, including a municipal parking authority, a labor union, political action committees, and a number of corporations and lobbyists.

B. Criminal Tax Offenses

1. The Tax Evasion Scheme

In the course of its investigation concerning defendant Howard Cain's activities performed on behalf of the SDAC, agents discovered that Cain failed to file federal income tax returns and has not reported any income or paid any federal income

Pennsylvania by submitting false invoices under a contract with the Senate Democratic Appropriations Committee that resulted in payments to the defendant for engaging in political campaign work, in violation of state law, resulting in fraud losses of more than \$200,000. The parties further stipulate and agree that, pursuant to U.S.S.G. §§ 1B1.2 and 1B1.3, this uncharged criminal conduct should be considered in determining the appropriate sentencing guidelines range of imprisonment and fine in this case.

This criminal conduct is described more fully in the superseding indictment filed in United States v. Vincent Fumo et al., Criminal No. 06-319 (E.D. Pa.), currently pending before the Honorable William H. Yohn, Jr.

taxes since at least 1991. An exhaustive financial investigation of Cain's income and expenditures by the FBI and the IRS, which focused primarily on the years 2002 through 2006, demonstrated that Cain received very substantial amounts of unreported income. The investigation also disclosed that Cain was engaged in an income tax evasion scheme whereby he used his corporation's bank accounts to receive the compensation paid to him from clients for consulting services and also to pay all of his personal expenditures. By failing to cause his company to submit Forms 1099 or W-2 to the IRS that disclosed his compensation, and by failing to cause his company to withhold federal payroll or self-employment taxes, Cain successfully evaded the assessment and payment of federal income taxes for the years 1991 through 2006.

IRS records reflect that Cain requested and received brief extensions of time to file his personal income tax returns with the IRS for the years 2002 through 2006.

2002: Cain requested and received two extensions from the IRS for the 2002 tax year. The first extension was filed on April 15, 2003, and gave Cain until August 15, 2003, to file his return. The second extension was filed on August 15, 2003, and gave Cain until October 15, 2003, to file his return. Cain never filed a return with the IRS for the 2002 tax year.

2003: Cain filed two extensions with the IRS for the 2003 tax year. The first extension was filed on April 15, 2004, and gave Cain until August 15, 2004, to file his return. The second extension was filed on August 15, 2004, and gave Cain until

October 15, 2004, to file his return. Cain never filed a return with the IRS for the 2003 tax year.

2004: Cain filed two extensions with the IRS for the 2004 tax year. The first extension was filed on April 15, 2005, and gave Cain until August 15, 2005, to file his return. The second extension was filed on August 15, 2005, and gave Cain until October 15, 2005, to file his return. Cain never filed a return with the IRS for the 2004 tax year.

2005: Cain filed one extension with the IRS for the 2005 tax year. The extension was filed on April 15, 2006, and gave Cain until October 15, 2006, to file his return. Cain never filed a return with the IRS for the 2005 tax year.

2006: Cain filed one extension with the IRS for the 2006 tax year. The extension was filed on April 15, 2007, and gave Cain until October 15, 2007, to file his return. Cain never filed a return with the IRS for the 2006 tax year.

The filing of these extension requests with the IRS is evidence that Cain was aware of the requirement to file personal income tax returns and report his income to the IRS. In addition, records received from a financial institution that extended credit to Cain included copies of what Cain purported to be his federal income tax returns for tax years 1995 and 1996 (which were actually not filed), which is further evidence that Cain understood that he had a duty to file individual federal tax returns.

In order to determine the extent to which Cain received income and made personal expenditures through the VAI corporate bank accounts, FBI and IRS agents identified the bank accounts that he used during the years 2002 through 2006. Agents identified three corporate bank accounts in the name of Venture Analysis Inc., at Wachovia Bank (formerly First Union National Bank), PNC Bank, and Commerce Bank. Through the issuance of grand jury subpoenas, the agents obtained and reviewed all of the available account statements, individual deposit items, and checks drawn on these accounts.

Between October 20, 1997, and August 31, 2004, Cain used a business account at First Union National Bank (now Wachovia) in the name of Venture Analysis, Inc. On March 18, 2002, Cain opened a business account at PNC Bank in the name of Venture Analysis, Inc. Cain was the sole signor on the account. This account was closed in April 2007. On April 7, 2003, Cain opened a business checking account at Commerce Bank NA (hereafter "Commerce Bank") in the name of Venture Analysis, Inc. Cain listed himself as the Business Manager of VAI and was the sole authorized signor on the account. As of August 2007, this account was open and active.

Agents reviewed bank records from First Union National (later Wachovia) Bank and Commerce Bank for the period January 1, 2002, through December 31, 2006. These records reflect a combined total of deposits of approximately \$1,323,627 and total withdrawals of approximately \$1,313,578 during this period of time. PNC Bank records

reflect total deposits of at least \$142,339 and total withdrawals of at least \$141,100 between January 1, 2002, and December 31, 2006.

Analysis of VAI's corporate bank records for the years 2002 through 2006 shows that Cain has repeatedly used the funds deposited into the corporate bank accounts for VAI in order to pay for a substantial amount of personal expenses which he should have reported on personal income tax returns as income. These include payments for the benefit of his children and family such as tuition and education expenses, camps and activities, and club memberships. Cain also used VAI's accounts to pay for the mortgage and utilities for his residence, and also to pay for numerous other personal expenses, including, among many others, auto expenses, vacation expenses, medical expenses, consumer electronics and other merchandise, and health, auto, and life insurance premiums. Additionally, Cain made substantial cash withdrawals out of the corporate accounts during the years 2002 through 2006.

2. Total Unreported Income and Unpaid Taxes

On February 13, 2008, FBI and IRS agents executed a search warrant at the residence of Howard Cain, which is also the business office of Venture Analysis, Inc., and seized a large volume of records that reflect the substantial amounts of unreported income that Cain has received since at least 1997. Agents seized thousands of pages of records reflecting work that Cain performed for various clients, as well as bank records, invoices, checks, and other records reflecting the receipt by Cain of payments for his services. Also seized were records that reflect that Cain was in contact with an

accountant with whom Cain had discussed the issue of preparing his delinquent returns. If the case were to proceed to trial, the government would introduce all of this documentary evidence to show the amount of income that Cain received each year. In addition, the correspondence between Cain and his accountant clearly demonstrates that Cain knew and understood that he had to file his delinquent returns, yet deliberately failed to do so.

If the case were to proceed to trial, the government would call numerous witnesses to establish the sources and uses of defendant Cain's income throughout the years relevant to this prosecution, including, among others, the many individual clients who paid Cain for his services, records custodians for the banks where Cain had accounts that held the funds he received as income and used to pay personal expenses, and records custodians for the numerous service providers and stores where Cain spent his income.

The government would also present trial testimony from defendant Cain's accountant. The accountant would testify that Cain approached him in the fall of 2004 around the time that Cain had been called to testify as a witness in the Fumo grand jury investigation. He would testify that Cain was concerned that the government might discover that he had not filed any tax returns since 1991. As a consequence, Cain gathered together records dating back to 1997 and requested that the accountant prepare the delinquent tax returns. Despite starting the process of addressing his long overdue tax problem, Cain did not actually ever follow through on the task. He never paid his accountant to complete the tax returns, despite the fact that the accountant prepared draft

tax returns dating back to 1997. Cain never signed or filed any of the individual Form 1040 tax returns that were prepared on his behalf, and made no effort whatsoever to pay any of the delinquent taxes that were due, despite reminders from his accountant to do so.

In response to a grand jury subpoena, defendant Cain's accountant provided to the IRS all of his workpapers and supporting documents that he relied on in preparing draft tax returns for Cain. A comparison of the accountant's records to the bank records (including canceled checks, deposited items, and statements) and other documents (including, among others, invoices, investment account records, credit card statements, and records received from third parties who received payments from Cain for goods and services) obtained by the government in the course of its investigation of Cain discloses that the total amount of unreported income that Cain received during the years 1997 through 2006 can be summarized as follows:³

³ As previously explained, defendant Cain has not filed a tax return or reported income to the IRS since at least 1991. Although he was employed and received income during the years 1991 through 1996, none of that income or unpaid tax is included in the government's analysis because the government does not have sufficient evidence to compute those amounts due to the passage of time and the lack of reliable records on which to base an accurate computation.

<u>YEAR</u>	<u>AMOUNT</u>
1997	\$156,939
1998	\$139,690
1999	\$130,470
2000	\$172,868
2001	\$155,385
2002	\$146,000
2003	\$181,000
2004	\$196,000
2005	\$199,439
2006	\$141,135
<u>TOTAL UNREPORTED INCOME:</u>	<u>\$1,618,926</u>

FBI and IRS agents reviewed all of the records provided by Cain's accountant, the records obtained through grand jury subpoenas, the records seized from Cain's residence, and all of the other relevant documents in this case. All of these business records would be offered as evidence if this case were to proceed to trial. Based on these records and analyses, an IRS revenue agent calculated the total amount of unpaid federal taxes owed by Cain for the years 1997 through 2006. The tax loss to the government arising from Cain's tax evasion scheme is summarized in the following chart:

<u>YEAR</u>	<u>AMOUNT</u>
1997	\$44,375
1998	\$33,852
1999	\$35,524
2000	\$45,526
2001	\$34,361
2002	\$31,853
2003	\$46,335
2004	\$50,718
2005	\$53,673
2006	\$35,086
<u>TOTAL TAX DUE AND OWING:</u>	<u>\$411,303⁴</u>

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

JOHN J. PEASE
Assistant United States Attorney

ROBERT A. ZAUZMER
Assistant United States Attorney

⁴ This is only the amount of the unpaid tax, and does not include interest and penalties.

CERTIFICATE OF SERVICE

I hereby certify that, on the date shown below, I have caused this motion to be delivered by hand for electronic filing to the Clerk of Court. A copy of this pleading was also sent to counsel on this date by first-class mail, postage prepaid, addressed to the following:

Peter J. Scuderi, Esquire
1420 Walnut Street
Suite 1000
Philadelphia, PA 19102



JOHN J. PEASE
Assistant United States Attorney

Date: June 5, 2008