

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

LAURENCE C. BARON

No. 17 CR ____

PLEA AGREEMENT

1. This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, JOEL R. LEVIN, and defendant LAURENCE C. BARON, and his attorneys, MICHAEL SIEGEL and JACQUELINE S. JACOBSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11, as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The information in this case charges defendant with impairing and impeding the Internal Revenue Service in violation of Title 26, United States Code, Section 7212(a) and willfully filing a false income tax return in violation of Title 26, United States Code, Section 7206(1).

3. Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with impairing and impeding the Internal Revenue Service in violation of Title 26, United States Code, Section 7212(a) and willfully filing a false income tax return in violation of Title 26, United States Code, Section 7206(1).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

a. Count One - Impairing and Impeding the IRS

Beginning no later than approximately January 1, 2009, and continuing through approximately August 21, 2013, in the Northern District of Illinois, LAURENCE C. BARON corruptly obstructed and impeded, and endeavored to obstruct and impede, the Internal Revenue Service in the due administration of Title 26, United States Code, namely, the correct identification and reporting

of income, and the assessment and collection of income taxes, penalties, and interest due the United States.

Between January 1, 2009 and August 21, 2013, BARON as president of Acme, and Acme obtained approximately \$152,000,000 in cash from Business A and Business B.

Payments to Suppliers

It was part of the corrupt endeavor that BARON, as President of Acme Refining Company, agreed to purchase scrap metal from suppliers and pay all or a portion of the sale price in the form of cash. Between January 2009 and August 21, 2013, Acme made cash payments ranging between \$200,000 and \$1,700,000 to 85 separate scrap metal suppliers.

When cash payments due to suppliers exceeded \$10,000, BARON directed Acme employees to issue multiple vouchers, using nominee or fictitious payees as the purported seller. The vouchers were provided to currency exchanges, Business A and Business B, along with check's payable to Business A and Business B in order to obtain the cash which was utilized to purchase the scrap metal.

The practice of using nominee and fictitious vouchers and the means of payment was undertaken to assist suppliers to conceal their income from the

IRS. Additionally, for at least one customer BARON caused Acme employees to destroy records related to the payment of cash for scrap metal.

Payments to Employees

Acme also engaged in a practice of paying its employees' wages with a portion in cash and a portion in the form of a check. Acme only reported the check portion of the employee wages to the IRS, and filed false documents with the IRS to conceal the cash portion of the wages and to evade the employer's portion of taxes owed on the cash wages.

As an employer, Acme was responsible for accurately reporting the total amount of wages paid to its employees, and withholding required amounts of taxes including FICA taxes and Medicare withholdings. Between January 2009 and August 2013, Acme paid cash wages to at least 50 employees of more than \$11,624,464, failed to report these cash wages to the IRS, and did not withhold the required amounts including FICA taxes and Medicare withholdings on these cash wages. In addition to not withholding the required amounts, on a quarterly basis, Acme filed false Employer's Federal Tax Returns (Form 941) with the IRS reporting only the check portion of the wages. On a yearly basis Acme created false Forms W2, reporting only the check portion of the wages, and sent these false Forms W2 to its employees and the

IRS. It was further part of the corrupt endeavor that BARON caused materially false federal corporate income tax returns (Forms 1120) to be filed for Acme for 2009 through 2012, in which Acme overstated the company's cost of goods by at least \$11,624,464, by treating cash wages to employees as cost of goods.

Payments for Personal Expenditures

Between September 7, 2011 and July 18, 2013, Acme at the direction of BARON, directed the payment of personal expenditures on behalf of corporate officers totaling no less than \$1.6 million to a Wisconsin construction company for non-business purposes, namely to pay construction costs related to a personal residence, and falsely recorded these expenditures as "cost of goods sold," in order to reduce Acme's tax liability and conceal the payment on behalf of these officers. The false records included the creation of false invoices for each payment in which the invoices described fictitious purchase of scrap steel.

b. Count Two - Filing a False Income Tax Return

On or about April 15, 2013, defendant filed a materially false and fraudulent U.S. Individual Income Tax Return Form 1040 with schedules and attachments for calendar year 2012 with the Internal Revenue Service in which he willfully failed to report all of the income he had received from Acme,

reporting only \$591,090 in total income on Line 22 of that return, when he knew that he had received additional income of at least \$957,049 that year from Acme. This conduct resulted in a federal tax loss of approximately \$143,558, a state tax loss of approximately \$47,852, and a total tax loss of \$191,410.

7. Defendant also acknowledges that for the purpose of computing his sentence under the Sentencing Guidelines, the following conduct, to which he stipulates, constitutes relevant conduct under Guideline §1B1.3:

During calendar year 2011, BARON, directed Acme to pay personal expenditures which he used for his personal benefit. On or about April 17, 2012, defendant filed a materially false and fraudulent U.S. Individual Income Tax Return Form 1040 with schedules and attachments for calendar year 2011 with the Internal Revenue Service. In this return, defendant willfully failed to report all of the income he received from Acme, reporting \$1,302,919 in total income on Line 22 of that return, when he knew that he had received additional income of at least \$116,438 that year from Acme. This conduct resulted in a federal tax loss of approximately \$17,465, a state tax loss of approximately \$5,822, and a total tax loss of approximately \$23,287.

During Acme's fiscal year ending April 30, 2012, defendant directed that payments totaling approximately \$260,958 be made to a construction business in Wisconsin in payment for work on a residence owned by an employee of Acme and record these expenditures as cost of goods sold, namely, the purchase of scrap metal. On or about January 15, 2013, defendant filed a materially false and fraudulent U.S. Corporation Income Tax Return Form 1120 with schedules and attachments for fiscal year 2012 with the Internal Revenue Service. In this return, defendant willfully overstated the cost of goods sold, reporting on Line 2 that the total cost of goods sold was \$414,883,310 when he knew that this amount included at least \$260,958 in personal expenditures. This conduct resulted in a federal tax loss of approximately \$80,741, a state tax loss of approximately \$18,404, and a total tax loss of approximately \$99,145.

Defendant's offense conduct and relevant conduct resulted in a total federal tax loss of approximately \$5,913,478 a total state tax loss of approximately \$671,441, and combined total tax loss of approximately \$6,584,919.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

Count One

a. A maximum sentence of 3 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Count Two

c. A maximum sentence of 3 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

d. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2016 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 24, pursuant to Guideline §§ 2T1.1 and 2T4.1(I) because the tax loss of \$6,584,919 is more than \$3,500,000 but less than \$9,500,000.

ii. The base offense level is increased by 2 because the offense involved sophisticated means pursuant to Guideline § 2T1.1(b)(2).

iii. The base offense level is increased by 4 because the defendant was an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive pursuant to Guideline § 3B1.1(a).

iv. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

v. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 27, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 70 to 87 months' imprisonment, in addition to any supervised release and fine the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature and based on facts known to the parties as of the time of this Agreement. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the

above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

11. Defendant understands that with the exception of the guidelines provisions identified above as binding on the parties, the guidelines calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed. R. Crim. P. 11(c)(1)(B). Errors in applying or interpreting any of the sentencing guidelines (other than those identified above as binding) may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

12. Each party is free to recommend whatever sentence it deems appropriate.

13. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the

maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

14. Regarding restitution, defendant agrees pursuant to Title 18, United States Code, Section 3663(a)(3), to the entry of an order requiring him to make restitution in the amount of \$741,483 to the Internal Revenue Service, and \$591,601 to the State of Illinois, which reflects the amount of his personal unpaid income tax, and the remaining balance of unpaid federal withholdings attributable to the cash wages paid to ACME employees, exclusive of penalties and interest. Defendant understands that the amount of tax loss as calculated by the Internal Revenue Service may exceed the amount of tax due as calculated for restitution in the criminal case.

15. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), and the IRS may collect the full amount of the restitution-based assessment pursuant to Title 26, United

States Code, Section 6331, notwithstanding any payment schedule set by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

17. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 17 CR____.

18. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

19. Defendant understands that nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant and his spouse or defendant's partnership or corporations.

Defendant understands that the amount of tax as calculated by the IRS may exceed the amount of tax due as calculated for the criminal case.

Waiver of Rights

20. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by

the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

c. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

21. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate

rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

22. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

23. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be

prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

24. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

25. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

26. Regarding matters relating to the Internal Revenue Service, defendant agrees as follows (nothing in this agreement, however, precludes defendant and his spouse or defendant's partnerships or corporations from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS):

a. Defendant agrees to cooperate with the Internal Revenue Service in any tax examination or audit of defendant and his spouse and defendant's partnerships or corporations which directly or indirectly relates to or arises out of the course of conduct that defendant has acknowledged in this Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records that the IRS may request.

27. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States

Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant and his spouse or defendant's partnerships or corporations. Nothing in this paragraph or the preceding paragraph precludes defendant and his spouse or defendant's partnerships or corporations from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

28. Defendant further agrees to file any tax returns which are due and have not been filed including Forms 1040 and Forms 1120 for tax years 2013 and 2014 on or before the date of sentencing. The United States agrees not to seek additional criminal charges in the Northern District of Illinois against the defendant for the failure to file these returns provided that they are filed on or before the date of sentencing.

29. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

30. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

31. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration

of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

32. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

33. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

34. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

JOEL R. LEVIN
Acting United States Attorney

LAURENCE C. BARON
Defendant

PATRICK J. KING, JR.
Assistant U.S. Attorney

MICHAEL SIEGEL
Attorney for Defendant

JACQUELINE S. JACOBSON
Attorney for Defendant

