

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE FILED IN OPEN COURT  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

**VS.**

LARRY C. THORNTON

**Defendant.**

DATE: 3-28-16

TIME: 11:55 am

INITIALS: JK

CR. NO.: 2116-CR-20052

## PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the following constitutes the Plea Agreement reached between the United States, represented by EDWARD L. STANTON III, United States Attorney for the Western District of Tennessee, DAMON K. GRIFFIN, Assistant United States Attorney, and ROBERT J. BOUDREAU, Trial Attorney for the Department of Justice Tax Division; and the defendant, LARRY C. THORNTON, represented by NATHAN BICKS and MARK ALLISON, defense counsel.

1. LARRY C. THORNTON agrees that he will enter a voluntary plea of guilty to Count 1 of the Information, which charges the defendant with failure to account for and pay over tax, in violation of 26 U.S.C. § 7202. This offense carries a maximum statutory punishment of imprisonment for not more than five (5) years imprisonment, a fine not to exceed either \$250,000, or twice the gross gain to the defendant or the gross loss to any person other than the defendant, a period of supervised release for not more than

(3) years, and a mandatory special assessment of \$100. LARRY C. THORNTON agrees that he is entering a voluntary plea of guilty to Count 1.

2. Pursuant to this agreement, the UNITED STATES agrees not to pursue additional charges regarding tax years 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 based on the incidents described in the Statement of Facts filed herewith.

3. Pursuant to this agreement, both the UNITED STATES and LARRY C. THORNTON agree that the offense level is 24, as set forth at U.S.S.G. §§ 2T1.6 and 2T4.1 for a loss in the amount of \$ \$8,977,364.33, that exceeds \$3,500,000, but is less than \$9,500,000, does apply in this case.

4. LARRY C. THORNTON agrees to pay restitution to the victim in this case, as follows:

- a. LARRY C. THORNTON agrees to the entry of a Restitution Order for the full amount of the IRS' losses. LARRY C. THORNTON agrees to pay restitution to the Internal Revenue Service ("IRS") in the amount of all taxes and assessed and accrued interest pursuant to 18 U.S.C. § 3663(a)(3) for the payroll tax liabilities of SEI in the amount of \$10,822,728.99.
- b. LARRY C. THORNTON agrees that the total amount of restitution results from his willful failure to pay required taxes.
- c. LARRY C. THORNTON agrees that the total amount of restitution consists of the following:

<b>SEI RETURNS TAX DEFICIENCIES</b>				
<b>Quarter Ending</b>	<b>Total Tax Due (Includes Employer Portion of FICA)</b>	<b>Interest</b>	<b>Payments Received</b>	<b>Restitution Amount</b>
Jun-07	\$820,736.00	\$398,108.49	\$0.00	\$1,218,844.49
Sep-07	\$633,957.00	\$285,869.90	\$547,599.82	\$372,227.08
Dec-07	\$566,871.00	\$237,461.95	\$0.00	\$804,332.95
Mar-08	\$653,178.00	\$256,158.33	\$0.00	\$909,336.33
Jun-08	\$633,861.00	\$234,095.50	\$0.00	\$867,956.50
Sep-08	\$585,145.00	\$203,673.10	\$0.00	\$788,818.10
Dec-08	\$529,438.00	\$172,502.89	\$0.00	\$701,940.89
Mar-09	\$535,502.00	\$165,090.42	\$0.00	\$700,592.42
Jun-09	\$484,859.00	\$142,020.31	\$0.00	\$626,879.31
Sep-09	\$450,695.00	\$125,151.01	\$0.00	\$575,846.01
Dec-09	\$523,005.00	\$137,346.85	\$0.00	\$660,351.85
Mar-10	\$433,474.84	\$107,576.76	\$0.00	\$541,051.60
Jun-10	\$427,758.39	\$99,836.90	\$0.00	\$527,595.29
Sep-10	\$412,234.15	\$90,183.02	\$0.00	\$502,417.17
Dec-10	\$373,355.00	\$76,723.85	\$0.00	\$450,078.85
Mar-11	\$395,250.33	\$68,195.30	\$0.00	\$463,445.63
Jun-11	\$384,603.91	\$56,410.61	\$330,000.00	\$111,014.52
<b>Totals:</b>	<b><u>\$8,843,923.62</u></b>	<b><u>\$2,856,405.19</u></b>	<b><u>\$877,599.82</u></b>	<b><u>\$10,822,728.99</u></b>

- d. LARRY C. THORNTON agrees that he will pay restitution by making payments as ordered by the Court in any Restitution Order entered pursuant to this agreement.
- e. If the Court orders LARRY C. THORNTON to pay restitution to the IRS for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release, the IRS will use the restitution order as the basis for a civil assessment. See 26 U.S.C. § 6201(a)(4). The



defendant does not have the right to challenge the amount of this assessment. See 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant's timely payment of restitution according to that schedule will preclude the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

- f. LARRY C. THORNTON agrees that he will sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate assessment of that portion of the tax and interest that he agrees to pay as restitution (see paragraph 4.c). The defendant also agrees to sign IRS Form 8821, "Tax Information Authorization."
- g. LARRY C. THORNTON agrees that he will not file any claim for refund of taxes represented by any amount of restitution paid pursuant to this agreement.
- h. LARRY C. THORNTON and the UNITED STATES understand and agree that defendant will receive proper credit, consistent with paragraph 4.c. above, for the payments made pursuant to this agreement. Except as set forth in the previous sentence, nothing in this agreement shall limit the IRS in its lawful examination, determination, assessment, or collection of any taxes, penalties or interest due from the defendant for the time period(s) covered by this agreement or any other time period.

- i. LARRY C. THORNTON agrees that this agreement, or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil liabilities, including tax, additional tax, additions to tax, interest, and penalties, owed to the IRS for the time period(s) covered by this agreement or any other time period. However, the IRS will ultimately determine the amount of tax penalties owed by LARRY C. THORNTON in keeping with IRS policies and practices for the relief of tax penalties.
  - j. LARRY C. THORNTON understands that he is not entitled to credit with the IRS for any payment sent to an incorrect address or accompanied by incomplete or inaccurate information, unless and until any payment is actually received by the Internal Revenue Service and identified by it as pertaining to his particular liability.
5. LARRY C. THORNTON and the UNITED STATES agree that restitution payments shall be made as follows:
- a. LARRY C. THORNTON agrees that, unless the Director of the Administrative Office of the United States Courts directs him otherwise, all payments made pursuant to the Court's Restitution Order are to be sent only to the Clerk of the Court at the following address:

Clerk of Court for the Western District of Tennessee  
167 N. Main St  
Room 242  
Memphis, TN 38103

- b. For each payment to the Clerk of the Court made pursuant to the Court's Restitution Order, the defendant will provide the following information:

- A. Defendant's name and Social Security number;
- B. The District Court docket number assigned to this case;
- C. Tax year(s) or period(s) for which restitution has been ordered; and
- D. A statement that the payment is being submitted pursuant to the District Court's restitution order.

LARRY C. THORNTON agrees to include a request that the Clerk of the Court send the information, along with his payments, to the appropriate office of the IRS. Notwithstanding anything herein, any payments made by the defendant to the Clerk of Court pursuant to the Restitution Order shall be applied to the amounts set forth in paragraph 4.c. herein and credited to the balance then owing in accordance with IRS procedures.

- c. LARRY C. THORNTON also agrees to send a notice of any payments made pursuant to this agreement, including the information listed in the previous paragraph, to the IRS at the following address:

IRS - RACS  
Attn: Mail Stop 6261, Restitution  
333 W. Pershing Ave.  
Kansas City, Missouri 64108

6. Pursuant to this agreement, the UNITED STATES agrees to recommend:



- a. That the defendant receives full credit for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1;
- b. That the defendant receives a sentence at the low end of the guideline range;
- c. That following any term of imprisonment, the defendant be placed on supervised release for a period of time to be determined by the Court;
- d. That the defendant be required to pay a fine amount if ordered by the Court;
- e. That the defendant pay the mandatory special assessment fee of \$100 per count, said amount due and owing as of the date the sentence is pronounced; and
- f. That the defendant be ordered to pay restitution in the amount of set forth in paragraph 4.a. to the IRS for the payroll tax liabilities of Software Earnings, Inc. and First Touch Payment Solutions, LLC.

7. LARRY C. THORNTON agrees not to commit any other federal, state, or local offense while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering or facilitation of any other criminal activity. The defendant agrees to provide truthful information to the Probation Office and/or the Court. Determination of whether the defendant's conduct is a violation of this provision is at the complete discretion of the UNITED STATES. The defendant understands that if the UNITED STATES receives information between the signing of this agreement and the time of the sentencing that

the defendant has previously engaged in, or if he engages in the future, in conduct inconsistent with the acceptance of responsibility, including, but not limited to, participation in any additional criminal activities between now and the time of sentencing, the UNITED STATES' position on acceptance of responsibility credit could change. Further, the defendant understands that whether or not acceptance of responsibility credit pursuant to U.S.S.G. § 3E1.1 is granted is a matter to be determined by the Court. Failure of the Court to grant acceptance of responsibility credit or impose a sentence as recommended by the UNITED STATES in this agreement shall not be a basis for LARRY C. THORNTON to withdraw his guilty plea.

8. LARRY C. THORNTON, to the extent not already completed, agrees to file true and correct corporate and personal tax returns for the years 2006 through 2014 within sixty days and to pay all taxes, interest and penalties for the years 2006 through 2014 within a reasonable time in accordance with a plan to be devised by the Probation Office. The defendant further agrees to make all books, records and documents available to the IRS for use in computing his personal and corporate taxes, interest and penalties for the years 2006 through 2014.


9. LARRY C. THORNTON understands that 18 U.S.C. § 3742 gives him the right to appeal the sentence imposed by the Court. Acknowledging this, the defendant knowingly and voluntarily waives his right to appeal any sentence imposed by the Court and the manner in which the sentence is determined so long as it is within the applicable guideline range, or lower, whatever the guideline range might be. This waiver is made in exchange for the concessions by the UNITED STATES as set forth in




this agreement. The waiver in this Paragraph does not apply to claims relating to prosecutorial misconduct and ineffective assistance of counsel.

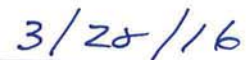
10. LARRY C. THORNTON agrees that this agreement constitutes the entire agreement between himself and the UNITED STATES and that no threats have been made to induce him to plead guilty. By signing this document, LARRY C. THORNTON acknowledges that he has read this agreement, has discussed it with his attorney and understands it. LARRY C. THORNTON acknowledges that he is satisfied with his attorney's representation.

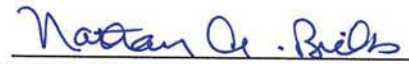
FOR THE UNITED STATES:  
EDWARD L. STANTON III  
UNITED STATES ATTORNEY


By:   
DAMON K. GRIFFIN  
Assistant United States Attorney  
ROBERT J. BOUDREAU  
Trial Attorney  
U.S. Department of Justice Tax Division

  
Date

  
LARRY C. THORNTON  
Defendant

  
Date

By:   
NATHAN BICKS  
MARK ALLISON  
Attorneys for Larry C. Thornton

  
Date