
UNITED STATES DEPARTMENT OF JUSTICE -- TAX DIVISION
COLLATERAL AGREEMENT
Future Income -- Individual

Name and Address of Taxpayers:

Social Security Numbers:

XXXXXX
XXXXXX

XXXXXX
XXXXXX

To: ASSISTANT ATTORNEY GENERAL -- TAX DIVISION

The taxpayers identified above have submitted a settlement offer dated _____ and acknowledged on _____, to compromise their federal income tax liabilities, plus statutory interest and additions, for the tax years XXXXX through XXXX as identified in the Complaint in *United States of America v. _____*. The United States accepted that settlement offer on _____.

The purpose of this collateral agreement (hereinafter referred to as this agreement) is to provide additional consideration for the acceptance of the offer referred to above and to comply with the terms of the settlement agreement entered into by the United States and the taxpayers. It is understood and agreed as follows:

1. In addition to any payments and other consideration under the settlement offer referred to above, the taxpayers will pay out of their annual income for the years XXXXX inclusive-
 - (a) Nothing on the first \$_____ of annual income;
 - (b) __ percent (__%) of annual income in excess of \$_____ and not in excess of \$_____;
 - (c) __ percent (__%) of annual income in excess of \$_____ and not in excess of \$_____; and
 - (d) __ percent (__%) of annual income in excess of \$_____.
2. The term annual income, as used in this agreement, means adjusted gross income as defined in Section 62 of the Internal Revenue Code ("Code") with the modifications specified in paragraph 3 below, and with the additions and subtractions specified herein. Annual income shall include all nontaxable income (including the taxpayers' share of tax-exempt income of any

partnership or S corporation, as defined in Code Section 1361) and profits or gains from any source whatsoever (including the fair market value of gifts, bequests, devises, inheritances and insurance payments). Federal, state, and local income tax reportable on the taxpayers' federal, state and local income tax returns for the year for which such annual income is being computed shall be subtracted in computing annual income, provided that such tax has been reported and paid. Annual income for purposes of this collateral agreement only and only to the extent initially reported by the taxpayers on the taxpayers' federal income tax return and/or statement of annual income also shall be reduced by (1) the taxpayers' principal and interest payments with respect to the mortgage on the residence located at XXXXX, obtained in conjunction with this settlement and (2) the taxpayers' payments for the utilities of electric, gas, and water at the residence located at XXXXX. This agreement is subject to the following rules:

- (a) If the taxpayers are a married couple, annual income shall include their combined income, except that, in the event that such married couple becomes, and thereafter remains, divorced and separated, then this agreement, as applied to the computation, reporting, and making of payments required after such divorce and separation, shall be construed as a separate agreement with each spouse (without settlement, including this agreement).
 - (b) Annual income shall be calculated without regard to the effect of any state community or other inter-spousal property laws.
 - (c) Where income of the taxpayer's spouse is not included but the taxpayer files a joint income tax return with the taxpayer's spouse, the federal, state and/or local income tax to be subtracted from the taxpayer's separate income in computing the payment required hereunder shall be that portion of the joint federal, state, and/or local income tax which bears the same ratio to the whole of such tax as the amount of the federal income tax for which the taxpayer would have been liable bears to the sum of the federal income taxes for which the taxpayer and the taxpayer's spouse would have been liable had each spouse filed a separate return (ignoring state community or other inter-spousal property laws).
3. In computing annual income under paragraph 2 above only for purpose of determining the amount of the payment required under paragraph 1, the following modifications shall be made to the definition of adjusted gross income;
- (a) Losses from the sale or exchange of property shall not be allowed, and any losses from the sale or exchange of property of any partnership or S corporation in which the taxpayers hold an interest shall be excluded in

computing the taxpayers' share of the entity's income or loss under Code Sections 702 and 1366(a)(1).

- (b) The deductions under Code Section 404 for contributions on behalf of a self-employed individual and Code Section 219 for contributions to an individual retirement account shall not be allowed.
 - (c) Any gain resulting from the sale of the property located at XXXXX shall be excluded. Any deduction or exclusion for long-term capital gains other than from the sale of the property located at XXXXX shall not be allowed.
 - (d) Consistent with paragraph 10 below, carryovers or carrybacks of net operating losses incurred before or after the period covered by this agreement shall not be allowed. Further, any net operating loss for any year during the period covered by this agreement shall be carried forward and only to the immediately succeeding year.
4. In the event closely held corporations (other than S corporations as defined in Code Section 1361) are directly or indirectly controlled or owned by the taxpayers during the existence of this agreement, the computation of annual income shall include the taxpayers' proportionate share of the total corporate annual income in excess of \$10,000, to the extent such sum is greater than any dividends actually received from such corporation during the applicable year (and thus included under paragraph 2 above). The term corporate annual income, as used in this agreement, means the taxable income of the corporation with the following additions, subtractions, and modifications. All nontaxable income of the corporation shall be added. Federal state, and local income tax paid by the corporation for the year for which annual income is being computed shall be subtracted. The corporation's special deductions (Code Sections 241 through 250) shall not be allowed. The corporation's losses from sales or exchanges of property shall not be allowed. Carryovers or carrybacks of net operating losses incurred before or after the period covered by this agreement shall not be allowed, and any net operating loss for any year during the period covered by this agreement shall be carried forward and only to the immediately succeeding year.
5. The annual payments provided for in this agreement (including interest pursuant to Code Sections 6621 (a) (2) and 6622 (a) on any delinquent payment computed from the due date of such payment) shall be paid to the United States, without notice, on or before the 15th day of the 4th month following the close of the calendar or fiscal year, except that the taxpayers will not be considered in default of this agreement if the payment, with interest, is made on such later date as may be allowed to the taxpayers to file a federal income tax return for such year; such payments to be accompanied by a sworn statement (in the form attached to this agreement) and copies of the taxpayers' federal, state, and any local income tax returns. The statement shall

refer to this agreement and show the computation of annual income in accordance with paragraphs 2, 3, and 4 of this agreement, and the further computation of the amount being paid in accordance with paragraph 1 of this agreement. If the taxpayer's spouse's income is not included under this agreement but the taxpayer files a joint income tax return with such spouse, the taxpayer shall also supply hypothetical (unsigned) Forms 1040 as they would be completed for the taxpayer and the taxpayer's spouse as if they had filed as married filing separate returns, or otherwise supply equivalent information sufficient to support the computation made under paragraph 2 (c) above. If the annual income for any year covered by this agreement is insufficient to require a payment under its term, the taxpayers shall still furnish the United States a sworn statement of such income and copies of the taxpayers' federal, state, and any local income tax returns. All books, records, and accounts shall be open at all reasonable times for inspection by the Internal Revenue Service and the United States Department of Justice to verify the annual income shown in the statement. The taxpayers further hereby consent to the disclosure of information required to be provided hereunder for the purpose of administering this agreement. The annual payments (if any), the sworn statements, and copies of the applicable income tax returns shall be remitted as follows:

By overnight mail to—

U.S. Department of Justice, Tax Division
Tax FLU, Office of Review
555 4th Street, NW
Room # 6647
Washington, D.C. 20001

By regular mail to—

U.S. Department of Justice, Tax Division
Tax FLU, Office of Review
P.O. Box 310
Ben Franklin Station
Washington, D.C. 20044-0310

In the event that the taxpayers' adjusted gross income for any year covered by this agreement is thereafter increased on any amended income tax return, the taxpayers shall recompute the annual payment required under this agreement for such year and send any portion that was not paid, together with interest at the rates referred to above, to the office indicated above, along with a copy of such amended return and a revised sworn statement (in the form attached hereto). If the taxpayers' adjusted gross income for any year covered by this agreement is proposed by the Internal Revenue Service to be increased as the

result of any audit or examination, the taxpayers shall immediately advise the office specified above of a potential need to recompute the payment that was due under this agreement for such year, shall pay any additional amount that the taxpayers agree was due hereunder (with interest at the rates referred to above), and shall remain liable for any additional amount determined to be due by a court of competent jurisdiction.

6. The aggregate amount paid under the terms of the settlement (including this agreement) shall not exceed an amount equivalent to the liability sought to be compromised plus statutory additions and interest that would have become due in the absence of the settlement.
7. Payments made under the terms of the settlement (including this agreement) may be applied, as among the various periods covered and as among tax, penalty, and/or interest for each period, in such order as the United States, in its sole discretion, deems to be in its best interests, and may be reapplied among the same to the extent deemed appropriate by the United States.
8. Upon the United States' acceptance of the settlement offer (including this agreement), the taxpayers shall have no right to contest in court or otherwise the amount of the liability sought to be compromised and, in the event that the amount of such liability becomes the subject of any court proceeding, the taxpayers agree to the immediate entry of judgment, if appropriate, for the full unpaid balance of such liability (unless a judgment has already been entered pursuant to the settlement). It is understood and agreed that the taxpayers' full performance under the settlement (including this agreement), without impairment of any security interest of the United States prior to such full performance and without any unjustified preferential treatment of any other creditor, is a condition precedent to any forgiveness of the balance of liability sought to be compromised as provided in the settlement, and that default shall not be excused on grounds of any inability of the taxpayers to comply with any term of the settlement (including this agreement) resulting from any cause or circumstance whatsoever, including the taxpayers becoming the subject of a proceeding under the Bankruptcy Code. Therefore, the following also is agreed:
 - (a) In the event of default in payment of any installment of principal or interest due under the terms of the settlement (including this agreement) or in the event any other provision of this agreement is not carried out in accordance with its terms, or in the event the taxpayers become the subject of any proceeding whereby the affairs of the taxpayers are placed under the control of another person or under the control and jurisdiction of a court other than in a case under the Bankruptcy Code, the United States, at its sole option, may—

- (1) proceed immediately (by suit if necessary) to collect the entire unpaid balance of the amount due under the settlement (including this agreement); or
 - (2) proceed immediately (by suit if necessary) to collect the full unpaid balance of the liability sought to be compromised (including the entry of a judgment, if one has not been entered), with statutory additions and interest pursuant to Code Sections 6621(a)(2) and 6622(a); or
 - (3) disregard the settlement (including this agreement) and apply all amounts previously paid thereunder against the amount of the liability sought to be compromised and, without further notice of any kind, assess (if not yet assessed) and collect, by levy or by proceedings supplemental to judgment or by separate suit (any restrictions against assessment and collection being waived), the balance of such liability with statutory additions and interest pursuant to Code Sections 6621(a)(2) and 6622(a).
- (b) In the event that the taxpayers become the subject of a proceeding under the Bankruptcy Code; any claim filed with the court with respect to the liability that is the subject of this agreement may be allowed in the amount of the full unpaid balance of the liability sought to be compromised (unless theretofore otherwise fixed by judgment), and the United States shall have the right to terminate the settlement (including this agreement) and seek to enforce such claim in accordance with the Bankruptcy Code, unless the following conditions are met for assumption or reinstatement of the settlement (with the approval of the court as necessary):
- (1) the taxpayers must promptly cure any payment default (with interest, including post-petition interest, pursuant to Code Sections 6621(a)(2) and 6622);
 - (2) the taxpayers must demonstrate adequate assurance of future performance without deferral or delay both during the bankruptcy proceeding and after confirmation of a plan or other termination of the proceeding, and without impairment of any security interest of the United States arising by virtue of any tax lien; and
 - (3) no creditor with a claim of lower distribution priority may receive more than it would if the United States terminated this agreement and sought enforcement of the full amount of its tax claim in accordance with the Bankruptcy Code.

Further, the taxpayers agree to provide notice to the Department of Justice, Tax Division, and also to the appropriate Internal Revenue Service office if the taxpayers become the subject of any proceeding under the

Bankruptcy Code, making reference in such notice to the settlement (including this agreement), and the taxpayers agree that, unless both such notices are provided, the United States may be deemed not to have notice of the bankruptcy.

9. The taxpayers waive the benefit of any statute of limitations applicable to the assessment and/or collection of the liability sought to be compromised, and agree to the suspension of the running of the statutory period of limitations on assessment and collection for the period during which the settlement offer (including this agreement) is pending or the period during which any installment or payment under the settlement (including this agreement) remains unpaid or any provision of this agreement is not carried out in accordance with its terms, and for one year thereafter.
10. Any net operating losses or capital losses sustained for years ending before the date on which the settlement offer (including this agreement) is accepted, and any unused credits from any such years, are waived and shall not be claimed as loss carryovers or credit carryovers in computing federal income taxes for the year in which the settlement offer (including this agreement) is accepted or any subsequent year and, accordingly, shall not be reported on any such federal income tax return. If this agreement is submitted by the taxpayers in the second half of the current tax year, then this paragraph shall also extend to any net operating loss, capital loss, or unused credit from the current tax year.
11. Any overpayment of any federal tax liability (income, excise, employment, or otherwise) made by the taxpayers with respect to any tax period ended before the date on which the settlement offer (including this agreement) is accepted, to the extent claimed as an overpayment within the applicable period of limitations, shall be applied to the tax liabilities sought to be compromised under the settlement offer (including this agreement).
12. All federal taxes due and owing with respect to any tax period ending while any other provision of this agreement is still in effect will be timely reported and paid in accordance with the provisions of the Code (and the failure of the taxpayers to do so shall constitute noncompliance entitling the United States to take any of the actions described in paragraph 8 above).
13. The taxpayers understand that the settlement offer (including this agreement) is evaluated on the premise that any financial information provided by the taxpayers or other information bearing on the collectability of the liability sought to be compromised is fully truthful and accurate. Upon the discovery that any information supplied to the Department of Justice or the Internal Revenue Service in such regard contains a material misstatement of fact or a material omission, the United States may take any of the actions described in paragraph 8 above.

14. The taxpayers shall not attempt or otherwise take any action the effect of which would be to lessen the amount of income coming within the definition of annual income subject to this agreement by causing the taxpayers' assets, or income attributable to the taxpayers' assets or services, to be transferred to or realized by a family member or other nominee of the taxpayers (and a breach of this provision shall entitle the United States to take any of the actions described in paragraph 8 of this agreement).

15. In the event that any paragraph of this agreement or any provision within any paragraph of this agreement is declared invalid or unenforceable, the other provisions of such paragraph and the other paragraphs of this agreement and the terms of the underlying settlement shall remain in full force and effect.

This agreement shall remain in full force and effect for a period of ____ (__) years beginning with the XXXX tax year.

Taxpayer Name

Date

Taxpayer Name

Date