

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Crim. No. _____

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) PLEA AGREEMENT AND
) SENTENCING STIPULATIONS
JAMES CARL WEHMHOFF,)
)
 Defendant.)

The United States of America and James Carl Wehmhoff (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges.** The defendant agrees to plead guilty to an Information charging him with one count of conspiracy to commit tax evasion in violation of 18 U.S.C. § 371, and one count of aiding and assisting tax fraud, in violation of 26 U.S.C. § 7206(2).

2. **Factual Basis.** The Defendant states as the following factual basis for the plea:

The defendant is a Certified Public Accountant. From July 2004 through September 2008, the defendant was employed by PETERS GROUP WORLDWIDE LLC ("PGW"), a company owned by THOMAS JOSEPH PETERS. From July 2004 through September 2007, defendant's title

was Executive Vice President - Tax at PGW. After September 2007, defendant's title was changed to Executive Vice President - Finance, Tax and Treasury.

As part of his duties with PGW, defendant oversaw the tax department for PGW and prepared tax filings for PGW and other business entities owned by THOMAS JOSEPH PETTERS, including PETTERS COMPANY, INC. ("PCI"). Defendant also prepared THOMAS JOSEPH PETTERS's personal tax filings. Defendant was also responsible for the accounting of, and IRS filings relating to, payments made by PGW and its affiliates to third parties.

While working for PGW, the defendant participated in a conspiracy to impede and impair the assessment and collection of taxes due and owing to the United States Department of the Treasury, involving THOMAS JOSEPH PETTERS, business entities owned by THOMAS JOSEPH PETTERS, and employees of businesses owned by THOMAS JOSEPH PETTERS. Defendant also aided and assisted in tax fraud in connection with THOMAS JOSEPH PETTERS's personal income tax return. The tax loss attributable his criminal conduct is approximately \$20 million.

While working for PGW, the defendant conspired with THOMAS JOSEPH PETTERS and other employees of businesses owned by THOMAS JOSEPH PETTERS to under-report their income. In order to effect the objects of the conspiracy and in furtherance of the conspiracy, defendant and other members of the conspiracy committed and caused

to be committed the following overt acts in the District of Minnesota and elsewhere: (1) falsely characterizing approximately \$60 million in payments made to or on behalf of THOMAS JOSEPH PETERS as "loans" when the payments should have been reported to the Internal Revenue Service as income and for which there were federal and state taxes due and owing; (2) falsely characterizing millions of dollars in payments made to employees of business entities owned by THOMAS JOSEPH PETERS as "gifts" when the payments should have been reported to the Internal Revenue Service as income and for which there were federal and state taxes due and owing; (3) failing to report to the Internal Revenue Service millions of dollars of payments made to employees of business entities owned by THOMAS JOSEPH PETERS which had been falsely characterized as "gifts;" (4) preparing tax returns for employees of business entities owned by THOMAS JOSEPH PETERS knowing that the returns falsely under reported the employees' income; and (5) filing defendant's own personal income tax returns in which he failed to report or pay taxes on one million of dollars in income which was falsely characterized as a "gift."

On or about October 16, 2006, the defendant prepared an individual income tax return for THOMAS JOSEPH PETERS for the tax year 2005, which the defendant knew falsely under reported THOMAS JOSEPH PETERS's income and which the defendant knew was filed with the Internal Revenue Service. In particular, the defendant knew

that THOMAS JOSEPH PETERS obtained millions of dollars from one of his companies, PCI, which were falsely characterized on the books of PCI as "loans" to THOMAS JOSEPH PETERS. Defendant knew that the payments from PCI were not loans and in fact were income to THOMAS JOSEPH PETERS. No loan documents were ever prepared, interest was not accrued on the books of PCI, and no repayments were made from 2004 to present. Defendant knew that the purpose of characterizing the payments from PCI as loans was to evade the payment of taxes on that income. Moreover, defendant prepared THOMAS JOSEPH PETERS's 2005 individual income tax return and knowingly failed to report any income from PCI. That false individual income tax return was filed with the Internal Revenue Service. Defendant also knew that THOMAS JOSEPH PETERS failed to report income from PCI earned during tax years 2006 and 2007 and defendant knew that THOMAS JOSEPH PETERS failed to file an individual income tax return for tax years 2006 and 2007.

The defendant also prepared documentation, including financial statements, knowing that it was false. Some of that documentation was provided to third-parties to induce them to make loans to THOMAS JOSEPH PETERS and business entities owned by THOMAS JOSEPH PETERS. Defendant contends that he was not told by THOMAS JOSEPH PETERS or others involved in the scheme to defraud third-party lenders that those individuals were engaged in such a scheme. In particular, defendant contends that he was unaware: (1) that PCI

was not engaged in the business of purchasing and reselling merchandise, as THOMAS PETTERS and other members of the fraud scheme falsely represented to the third-party lenders; and (2) that THOMAS PETTERS and other members of the fraud scheme provided false invoices and purchases orders to third-party lenders to create the appearance that PCI was engaged in the business of purchasing and reselling merchandise.

For his efforts, the defendant received millions of dollars from THOMAS JOSEPH PETTERS and business entities owned by THOMAS JOSEPH PETTERS that he now understands were proceeds of fraud.

3. **Waiver of Indictment.** The defendant agrees to waive indictment by a grand jury on these charges and to consent to the filing of a criminal information. The defendant further agrees to execute a written waiver of his right to be indicted by a grand jury on this offense.

4. **Waiver of Pretrial Motions.** The defendant understands and agrees that he has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

5. **Statutory Penalties.** The defendant understands that the maximum statutory penalty for violation of 18 U.S.C. § 371 is as follows:

- a. a term of imprisonment of up to 5 years;
- b. a criminal fine of up to the greater of \$250,000.00 or twice the amount of gain or loss;
- c. a term of supervised release of up to three years;
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing; and
- e. the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

The defendant understands that the maximum statutory penalty for violation of 26 U.S.C. § 7206(2) is as follows:

- a. a term of imprisonment of up to 1 years;
- b. a criminal fine of up to \$250,000.00;
- c. a term of supervised release of up to 3 years;
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing; and
- e. costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

6. **Revocation of Supervised Release.** The defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release

term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

7. **Guideline Calculations.** The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines to determine the appropriate sentence and stipulate to the following guideline calculations:

- a. Base Offense Level for Aiding and Assisting Tax Fraud. The base offense level for aiding and assisting tax fraud under 26 U.S.C. § 7206 is 26. (U.S.S.G. §§ 2T1.4(a)(1) and 2T4.1(K).)
- b. Specific Offense Characteristics for Aiding and Assisting Tax Fraud. The parties agree that defendant's offense level will be increased by 2 levels because the defendant committed the offense as part of a pattern or scheme from which he derived a substantial portion of his income, under U.S.S.G. § 2T1.4(b)(1). The parties agree that no other specific offense enhancements apply.
- c. Base Offense Level for Conspiracy To Commit Tax Evasion. The base offense level for conspiracy to commit tax evasion under 18 U.S.C. § 371 is 28. (U.S.S.G. §§ 2T1.4(a)(1) and 2T1.9(a)(1).)
- d. Chapter Three Adjustments.
 - (1) Victim-Related/Role in Offense/Obstruction. The parties agree that the base offense level for both aiding and assisting tax fraud under 26 U.S.C. § 7206 and conspiracy to commit tax evasion under 18 U.S.C. § 371 is to be increased by 2 levels because the defendant abused a position of trust. (U.S.S.G. § 3B1.3.)
 - (2) Acceptance of Responsibility. In exchange for the defendant's plea, the government agrees to recommend that the defendant receive a 3-level reduction for acceptance of responsibility and

to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea hearing, (ii) the defendant cooperates with the Probation Office in the pre-sentence investigation, (iii) the defendant commits no further acts inconsistent with acceptance of responsibility, and (iv) the defendant complies with this agreement, fully identifies all assets and makes good faith efforts to make restitution to his victims. (U.S.S.G. §3E1.1). The parties agree that other than as provided for herein no other Chapter 3 adjustments apply.

- e. Criminal History Category. Based on information available at this time, the parties believe that the defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.
- f. Guideline Range. If the offense level is 27, and the criminal history category is I, the Sentencing Guidelines range is 70-87 months imprisonment.
- g. Fine Range. If the adjusted offense level is 27, the fine range is \$12,500 to \$125,000. (U.S.S.G. § 5E1.2(c)(3)).
- h. Supervised Release. The Sentencing Guidelines require a term of supervised release of between two and three years. (U.S.S.G. § 5D1.2).
- i. Departures and Sentencing Recommendations. The parties reserve the right to make motions for departures or variances from the applicable guideline.

8. **Discretion of the Court**. The foregoing stipulations are binding on the parties, but do not bind the Court. The parties

understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. The Court may also depart from the applicable guidelines. If the Court determines that the applicable guideline calculations or the defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

9. **Special Assessments.** The Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The defendant agrees to pay the special assessment prior to sentencing.

10. **Restitution.** The defendant agrees, pursuant to 18 U.S.C. § 3663(A), to make complete restitution to victims of his offenses, with the amount of the restitution to be determined by the Court at the time of sentencing. The defendant represents that he has fully and completely disclosed to the United States Attorney's Office the existence and location of any assets in which he has any right, title, or interest. The defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court.

If requested by the United States, the defendant agrees to submit to a polygraph examination to determine whether he has truthfully disclosed the existence of all of his assets.

Additionally, the defendant will cooperate fully with the Internal Revenue Service to promptly determine and make arrangements to pay his tax liability. Nothing in this agreement shall limit the IRS or the State of Minnesota in their respective lawful examination, determination, assessment, or collection of any taxes, penalty or interest due from the defendant for any of the years in question.

11. **Forfeiture**. The government reserves its right to proceed against any of the defendant's assets if said assets represent real or personal property involved in violations of the laws of the United States or are proceeds traceable to such property. The defendant agrees that all funds he received from PCI, PGW, THOMAS JOSEPH PETERS, and/or business entities owned by THOMAS JOSEPH PETERS, are proceeds of the fraud scheme, and are, therefore, subject to forfeiture. The defendant asks that the government allow such proceeds to be used for restitution.

12. Complete Agreement. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date:

FRANK J. MAGILL, JR.
United States Attorney

BY: _____
JOSEPH T. DIXON, III
JOHN R. MARTI
TIMOTHY C. RANK
JOHN F. DOCHERTY
Assistant U.S. Attorneys

Date:

JAMES CARL WEHMHOFF,
Defendant

Date:

ANDREW LUGER,
Counsel for Defendant