

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA
v.
GARY T. PETERSEN

No. 20 CR 50043

Honorable Iain D. Johnston

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant GARY T. PETERSEN, and his attorney, ROYAL B. MARTIN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The information in this case charges defendant with tax evasion, in violation of Title 26, United States Code, Section 7201.

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

4. Defendant fully understands the nature and elements of the crime 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 tax evasion, in violation of Title 26, United States Code, Section 7201.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

a. Generally, beginning on or about January 1, 2016, and continuing through on or about March 23, 2017, in the Northern District of Illinois, Western Division, and elsewhere,

GARY T. PETERSEN,

defendant herein, did willfully attempt to evade and defeat the payment of income tax due and owing by defendant to the United States of America for the calendar year 2016, by committing affirmative acts of evasion.

b. Specifically, during the calendar year 2016 defendant was a resident of Crystal Lake, Illinois. He owned and operated Petersen Sealcoating and Paving, Inc. (PSPI), an Illinois corporation that operated in and around Crystal Lake, Illinois. The defendant operated PSPI as an S Corporation for tax purposes. Defendant Petersen maintained joint bank accounts with family members at Home State Bank. He also controlled a bank account at Home State Bank that was owned by two of his family members. PSPI maintained business bank accounts at Home State Bank. During the calendar year 2016, Petersen deposited and caused to be deposited, checks received by PSPI as payment for its services and products, into his

joint accounts and a family members' account he controlled, instead of PSPI's business bank accounts. The defendant also cashed checks PSPI received as payment and personally retained the cash. The defendant made the deposits into his joint and controlled accounts, and cashed the checks, with the intended purpose of excluding the money from income reported by PSPI to the Internal Revenue Service. For the calendar year 2016, the defendant provided PSPI income information to his tax preparer in Crystal Lake, Illinois, but intentionally concealed checks to PSPI that he deposited and caused to be deposited, into his joint and controlled accounts at Home State Bank, and the checks he cashed. The tax preparer prepared a 2016 Subchapter S Income Tax Return, Form 1120S. The defendant filed, and caused the filing, of the 2016 Form 1120S by the tax preparer in Crystal Lake, Illinois. For the calendar year 2016, the defendant prepared, and caused to be prepared by his tax preparer, a false and fraudulent 2016 U.S. Individual Income Tax Return, Form 1040, as his federal income tax return. The defendant concealed from his tax preparer information about his deposit of payment checks to PSPI into his joint and controlled accounts at Home State Bank. On or about March 23, 2017, the defendant's tax preparer e-filed the 2016 Form 1040 from the preparer's office in or near Crystal Lake, Illinois. The defendant's 2016 Form 1040 reported the receipts, expenses, and income from PSPI on a Schedule E, Supplemental Income and Loss. The defendant's 2016 Form 1040 stated that he and a co-filer had taxable income for the 2016 calendar year of \$75,028, and that the amount of tax due and owing thereon was the sum of

\$10,919, when the defendant knew and believed that he and his co-filer had taxable income of approximately \$1,174,261, and that, as a result, the additional amount of income tax due and owing to the United States of America by the defendant and his co-filer for 2016 was approximately \$402,431. During the years 2012, 2013, 2014, and 2015, the defendant engaged in the same acts regarding deposits of PSPI income into his joint and controlled accounts, cashing checks at Home State Bank, underreporting of PSPI's income on Forms 1120S, and underreporting his personal income on his personal Forms 1040. The following is a summary of the taxable income originally reported by the defendant, the gross amount of receipts PSPI did not report, the correct total taxable income for the defendant, and the additional tax due and owing for the years 2012 – 2015.

Year	2012	2013	2014	2015
Reported Taxable Income	\$79,330	\$ 69,634	\$98,473	\$122,715
Unreported Gross Receipts	\$99,405	\$238,844	\$438,443	\$932,151
Correct Taxable Income	\$178,735	\$325,670	\$566,022	\$1,099,628
Total additional tax due	\$33,216	\$82,388	\$146,853	\$356,230

Maximum Statutory Penalties

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

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the Court must order costs of prosecution, estimated not to exceed \$500. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Pursuant to 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

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities

among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. 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 the offense. The following statements regarding the calculation of the Sentencing Guidelines are based on the November 2018 Guidelines Manual.

b. **Offense Level Calculations.**

i. The government contends, and the defendant disagrees, the tax loss pursuant to Guideline § 2T1.1(a)(1) and 2T4.1(H) is \$1,134,528 and the base offense level is 20. The following is the government's calculation of the tax loss.

	2012	2013	2014	2015	2016	Total
Unreported Income	\$99,405	\$238,844	\$438,443	\$932,151	\$1,056,525	\$2,765,368
Fed Tax Due & Owing	33,216	82,388	146,853	356,230	402,431	1,021,118
State Tax Due & Owing	4,970	11,942	21,922	34,956	39,620	113,410
Guideline § 2T1.1(a)(1) and 2T4.1(H) Tax Due	\$38,186	\$94,330	\$168,775	\$391,186	\$442,051	\$1,134,528

The defendant contends, and the government disagrees, the tax loss pursuant to Guideline § 2T1.1(a)(1) and 2T4.1(H) is \$644,813, and the base offense level is 20.

	2012	2013	2014	2015	2016	Total
Unreported Income	\$(8,914)	\$139,850	\$262,538	\$314,745	\$900,271	\$1,608,490
Fed Tax Due & Owing	\$(2,318)	\$47,723	\$ 91,398	\$109,738	\$333,107	\$ 579,648
State Tax Due & Owing	\$(446)	\$ 6,921	\$ 13,127	\$ 11,803	\$ 33,760	\$ 65,165
Guideline § 2T1.1(a)(1) and 2T4.1(H) Tax Due	\$(2,764)	\$54,644	\$104,525	\$121,541	\$366,867	\$ 644,813

The defendant and the government each agrees that the tax loss calculated and the manner of the calculation is binding on that party, and that neither the defendant nor the government will assert or argue a different amount of tax loss at sentencing.

ii. 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. Defendant acknowledges that if he falsely denies or frivolously contests conduct comprising the offense or relevant conduct that the court determines to be true, such action would be inconsistent with acceptance of responsibility, and the government's position as to the defendant's acceptance of responsibility could change.

iii. 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 government contends the anticipated offense level, is 17 which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 24 to 30 months' imprisonment, in addition to any supervised release, fine, and restitution 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.

f. Both parties expressly acknowledge that while none of the guidelines calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Fed. R. Crim. P. 11(c)(1)(B) that certain components of those calculations—specifically, those set forth above in subparagraph (b)(i) of this paragraph—are binding on the parties, and it shall be a breach of this Agreement for either party to present or advocate a position inconsistent with the agreed calculations set forth in the identified subparagraph.

10. 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

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

12. 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.

13. The government agrees to disclose to the Court the nature and extent of the defendant's assistance efforts prior to sentencing. If, in its sole discretion, the government determines subsequent to defendant's sentencing in this case that defendant has provided substantial assistance, as described in Fed. R. Crim. P. 35(b)(2), which assistance has not been taken into account by the parties in fashioning the sentencing agreement in this case, and is not taken into account by the Court in imposing sentence, then the government will move for a reduction in his sentence pursuant to Fed. R. Crim. P. 35(b)(4). Defendant understands that it is solely within the government's discretion whether to move for a reduction in his sentence, and he agrees not to challenge the government's decision if it determines in its discretion that such a motion is not appropriate. Defendant also understands that should the government seek such a reduction as outlined above, it is solely within the Court's discretion to grant or reject such a request, and to determine the extent of any reduction.

14. Regarding restitution, defendant agrees to pay restitution, in an amount determined by the Court, arising from the criminal conduct and relevant

conduct set forth above, pursuant to Title 18, United States Code, Sections 3663(a)(3), and 3664. Defendant understands 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. Defendant further understands that the IRS may use the restitution order as a basis for civil assessment pursuant to Title 26, United States Code, Section 6201 (a)(4).

15. Defendant agrees to pay the special assessment of \$100 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), 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 20 CR 50043.

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 guilt and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

d. 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.

21. Defendant understands that he has the right to have the criminal charge in the information brought within five years of the last of the alleged acts constituting the specified violation. By signing this document, defendant knowingly waives any right to have the charge in the information brought against him within the period established by the statute of limitations. Defendant also knowingly waives any defense or claim based upon the statute of limitations or upon the timeliness with which the charge in the information was brought.

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 or probation 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 or probation 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 paragraph, 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.

28. 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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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: _____

JOHN R. LAUSCH, JR.
United States Attorney

GARY T. PETERSEN
Defendant

MICHAEL D. LOVE
Assistant U.S. Attorney

ROYAL B. MARTIN
Attorney for Defendant