

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

No. 17 CR 223

v.

ACME REFINING COMPANY d/b/a  
ACME REFINING SCRAP IRON &  
METAL COMPANY

**PLEA AGREEMENT**

This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, JOEL R. LEVIN, and defendant ACME REFINING COMPANY d/b/a ACME REFINING SCRAP IRON & METAL COMPANY, and its attorney, ARTHUR E. ROSENSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

**Charges in This Case**

1. 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) (Count One).

2. Defendant fully understands the nature and elements of the crime with which it has been charged. Defendant has been represented by counsel and acknowledges that counsel has advised it of the nature of the charges, possible defenses to the charges, and the nature and range of possible sentences.

**Charges to Which Defendant Is Pleading Guilty**

3. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count One of the information, which charges defendant with impairing and impeding the Internal Revenue Service in violation of Title 26, United States Code, Section 7212(a).

**Factual Basis**

4. Defendant will plead guilty because it is in fact guilty of the charge contained in Count One of the information. In pleading guilty, defendant admits the following facts and that those facts establish its guilt beyond a reasonable doubt:

Beginning no later than approximately January 1, 2009, and continuing through approximately August 21, 2013, in the Northern District of Illinois, ACME 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, ACME obtained approximately \$152,000,000 in cash from currency exchanges, Business A and Business B.

#### *Payments to Suppliers*

It was part of the corrupt endeavor that ACME, 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, ACME employees issued 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, ACME employees were directed to destroy records related to at least one customer to conceal the customer's receipt of cash for scrap sold to ACME.

*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 ACME caused materially false federal corporate income tax returns (Forms 1120) to be filed for tax years 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 paid personal expenditures on behalf of corporate officers totaling no less than \$1.6 million for non-business purposes and falsely recorded these expenditures as "cost of goods sold," in order to reduce ACME's corporate tax liability and conceal the payments on behalf of these officers. The false records included the creation of false invoices for each payment in which the invoices described fictitious purchases of scrap metal.

#### *Use of Currency Exchanges*

Beginning no later than January 1, 2009, and continuing until approximately August 21, 2013, ACME structured approximately \$152,000,000 in cash transactions with the currency exchanges known as Business A and Business B in order to conceal ACME's cash payments to

employees and suppliers from the IRS, and assist the employees and suppliers to evade taxes owed by them.

Between at least June 2009 and August 2013, ACME's Director of Finance and Chief Financial Officer, in response to inquiries by MB Financial Bank, misled and falsely told the bank that ACME's large volume check cashing activity at currency exchanges was for a proper business purpose, namely, that it was limited to pay individual scrap metal sellers small amounts of cash, and concealed that ACME routinely structured these transactions to be less than \$10,000, and used the cash obtained from exchanges to pay cash wages and compensation to ACME employees and pay certain business expenses and vendors in cash. The Director of Finance further sought to conceal ACME's payment of cash wages to employees by submitting false financial statements to the Bank in which the cash wages and compensation to employees and officers were falsely recorded as costs of goods and inventory.

Defendant's offense conduct resulted in a total federal tax loss of approximately \$5,609,139, a total state tax loss of approximately \$589,090, and combined total tax loss of approximately \$6,198,229. This represents unpaid and evaded federal corporate income tax of \$80,741 and unpaid and evaded state corporate income tax of \$18,404 for tax year 2011; unpaid and evaded

federal employment tax of \$1,646,796, due on cash wages it paid for tax years 2009 through 2013; \$3,254,850 in federal income tax and \$490,846 in state income tax attributable to the unreported cash wages ACME paid to its employees in tax years 2009 through 2013; and \$626,751 in federal income tax and \$79,840 in state income tax attributable to the cash payments made to three separate scrap suppliers between tax years 2009 and 2013.

**Maximum Statutory Penalties**

5. Defendant understands that the charges to which it is pleading guilty carry the following statutory penalties:

a. Count One carries a maximum term of probation of three years, a fine in the amount of \$12,396,458 which is the amount equal to twice the gross gain or loss resulting from the offense.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$400 on the count to which it has pled guilty, in addition to any other penalty or restitution imposed.

c. Therefore, under the count to which defendant is pleading guilty, the total maximum sentence is a fine in the amount of \$500,000, or twice the gross gain or gross loss resulting from the offenses of conviction, whichever is greater, and special assessments totaling \$400, in addition to any restitution ordered by the Court.

## Sentencing Guidelines Calculations

6. 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, and that the Court must consider the Guidelines in determining a reasonable sentence.

7. 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 for Count One is 24, pursuant to Guidelines §§2T1.1 and 2T1.4(I), because the tax loss of \$6,198,229 is greater than \$3,500,000 but less than \$9,500,000.

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

**c. Calculation of Fine**

i. Pursuant to Guideline §§ 8C2.1, 8C2.4(a)(1) and 8C2.4(d), the base fine is \$6,500,000.

ii. The starting point for the culpability score is 5, pursuant to Guideline §8C2.5(a). This culpability score receives 3 additional points under Guideline §8C2.5(b)(3)(A)(i), because defendant had 200 or more employees and an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense. The culpability score is reduced by 1 point pursuant to Guideline §8C2.5(g)(3), because the organization clearly demonstrated recognition and affirmative acceptance of responsibility for the offense. Therefore, the total culpability score is 7.

iii. With a total culpability score of 7, the Minimum Multiplier is 1.40 and the Maximum Multiplier is 2.80, pursuant to Guideline § 8C2.6.

iv. Pursuant to Guideline § 8C2.7, the minimum guideline fine is \$9,100,000 and the anticipated maximum guideline fine is \$18,200,000.

e. Defendant and its 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 its plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), that errors in applying or interpreting any of the Sentencing Guidelines 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 provision of the Guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw its plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

### **Agreements Relating to Sentencing**

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

10. 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 its guilty plea.

11. Regarding restitution, defendant agrees pursuant to Title 18, United States Code, Section 3663(a)(3), to pay restitution to the IRS in the amount of \$4,545,243 and \$509,250 to the State of Illinois. The total amount of restitution to the IRS consists of the following:

Tax Year	Conduct	Amount
2009	failure to pay withholding /Form 941	\$244,858
	amount due to untaxed wages/ Form 1040	\$448,105
2010	failure to pay withholding /Form 941	\$446,526
	amount due to untaxed wages /Form1040	\$817,172
2011	failure to pay withholding /Form 941	\$396,531
	amount due to untaxed wages / Form 1040	\$834,802
	unpaid corporate tax / Form 1120	\$80,741
2012	failure to pay 1 <sup>st</sup> quarter withholding / 941	\$121,737
	amount due to untaxed wages / Form 1040	\$1,009,663
2013	amount due to untaxed wages / Form 1040	\$145,108

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. Defendant also agrees not to file any claim for

refund of taxes or penalties represented by the amount of restitution paid pursuant to this Agreement.

12. On August 21, 2013, the government seized defendant's funds totaling \$5,045,243.85, which included \$4,861,458.59, seized from M.B. Financial Bank, account #xxx6606, and \$183,785.26 seized from ACME's business premises. The government agrees to apply \$500,000 of these funds to the assessed fine and the remainder to the amount of restitution owed by defendant to the IRS. Defendant consents and agrees to apply these seized funds in satisfaction of the assessed fine and restitution. Defendant understands that the Court may impose additional fines and penalties upon the defendant in addition to the amounts set forth above.

13. Defendant agrees to pay the special assessment of \$400 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

### **Acknowledgments and Waivers Regarding Plea of Guilty**

#### **Nature of Agreement**

14. 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 223.

15. 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.

16. Defendant understands that nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant.

### **Waiver of Rights**

17. Defendant understands that by pleading guilty it surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that it may have a right to have the charges 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 any 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 it has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against it, and if it does, it 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 its 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 it unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt and that it was to consider each count of the information separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

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, and considering each count separately, 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 its attorney would be able to cross-examine them.

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

c. **Appellate rights.** Defendant further understands it is waiving all appellate issues that might have been available if it had exercised its 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.

d. Defendant understands that by pleading guilty it 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 it, and the consequences of its waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

18. 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 charges against it, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of defendant's cooperation.

19. 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 its financial circumstances, including its 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 its 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.

20. For the purpose of monitoring defendant's compliance with its obligations to pay a fine and restitution 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 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**

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

22. Regarding matters relating to the Internal Revenue Service, defendant agrees as follows (nothing in this agreement, however, precludes defendant 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 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.

b. 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 or defendant's partnerships or corporations. Nothing in this paragraph or the preceding paragraph precludes defendant 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.

23. Defendant acknowledges that it failed to file Corporate Federal Income Tax Returns for fiscal years ending 2013, 2014, and 2015. No tax liability has been determined at this time for those tax years. Defendant further agrees to file true, complete and accurate federal income tax returns

for ACME on or before the date of sentencing. The United States agrees not to seek any criminal charges regarding the failure to timely file these returns, however, it does not limit the Internal Revenue Service from the assessment of any fines, interest or penalties for defendants to timely file any returns in those years.

### **Conclusion**

24. 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.

25. Defendant understands that its compliance with each part of this Agreement extends throughout the period of its sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event it 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.

26. 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.

27. Defendant and its 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.

28. Defendant acknowledges that it has read this Agreement and carefully reviewed each provision with its attorney. Defendant further acknowledges that it understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

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JOEL R. LEVIN

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ACME REFINING COMPANY

Acting United States Attorney

Defendant

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

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ARTHUR E. ROSENSON  
Attorney for Defendant