IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 05-CR-348-WM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. GODERICK AUGUSTUS BENJAMIN,

Defendant.

PLEA AGREEMENT AND STATEMENT OF FACTS RELEVANT TO SENTENCING

The United States of America (the government), by and through Kenneth M. Harmon, Assistant United States Attorney for the District of Colorado, and the defendant, Goderick Benjamin, personally and by counsel, Edward A. Pluss, Esq., Assistant Federal Public Defender, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to D.C.COLO.LCrR 11.1.

I. PLEA AGREEMENT

A. The defendant agrees to plead guilty to Count 3 of the Indictment, charging him with wire fraud, in violation of 18 U.S.C. §1343, and Count 56 of the Indictment, charging him with income tax evasion, in violation of 26 U.S.C. §7201.

B. The defendant further agrees that restitution is mandatory in this case, and the defendant agrees that, although he is entering a guilty plea only to Count 3 of the Indictment with respect to the mail fraud and wire fraud schemes alleged therein, he assents to calculating restitution

based on all of the losses sustained as a result of his commission of all of the offenses charged in the Indictment and their relevant conduct.

C. The defendant agrees, in particular, that restitution is due and owing to the Wal-Mart Stores, Inc. ("Wal-Mart") in the total amount of approximately $417,583 as a result of his commission of the offense set forth in Count 3 of the Indictment and its relevant conduct and agrees, pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3663A(c)(2), that he will consent to the Court's imposition of an order of restitution of such amount.

D. The defendant further agrees to cooperate fully with the Internal Revenue Service ("IRS") by preparing and filing returns for all tax years for which he remains delinquent, including, but not limited to, calendar and tax years 1998, 1999, 2000, and 2001; and by otherwise cooperating with the IRS in the assessment and collection of his correct tax liabilities for such years. The defendant further agrees to file truthful and accurate income tax returns which are or may become due by law during any period of supervised release or probation imposed by the Court.

E. The United States agrees to dismiss the remaining counts of the Indictment after sentencing.

F. The parties acknowledge that, pursuant to United States v. Booker, __ U.S. __, 2005 WL 50108, at *27 (Jan. 12, 2005) , the Court, while not bound by them, is required to consider the United States Sentencing Guidelines and determine the defendant's applicable sentencing guideline range, in deciding the sentence in this case. The parties agree that, in connection with the Court's determination of the applicable sentencing guideline range for defendant's offense of conviction and relevant conduct, they will take the positions regarding the sentencing factors set forth in Part IV herein (the parties' Sentencing Computation), which positions are based on their understanding and

agreement that the defendant's applicable sentencing guideline range should be calculated based on the 2000 edition of the Sentencing Guideline Manual. The parties agree and acknowledge that their positions concerning sentencing computation, as set forth in Part IV herein, would result in the defendant having a Total Offense Level of 16 and, assuming a Criminal History Category Level I, an advisory sentencing guideline range of 21 to 27 months.

F.1. The government agrees that it will not seek a sentence that exceeds the upper end of the range determined by the positions set forth in the parties' Sentencing Computations (i.e., above 27 months, assuming a Total Offense Level of 16 and a Criminal History Category I). The defendant agrees the he will not seek or advocate for a sentence that is under the bottom of the range determined by the positions set forth in the parties' Sentencing Computations (i.e., below 21 months, assuming a Total Offense Level of 16 and a Criminal History Category I).

G. The parties understand, acknowledge and agree that the sentencing recommendations of the parties under this plea agreement are made pursuant to Rule 11(c)(1)(B) of the Federal Rule of Criminal Procedure and are not binding on the Court.

II. STATUTORY PENALTIES

The maximum statutory penalty for the offense set forth in Count 3 of the Indictment (18 U.S.C. §1343), the first count of conviction under this agreement, based on the version of the statue in effect at the time of the offense, is: not more than five (5) years imprisonment; not more than a $250,000 fine, or both; not more than three (3) years supervised release; a $100 special assessment fee; plus restitution.

The maximum statutory penalty for the offense set forth in Count 56 of the Indictment (26 U.S.C. §7201), the second count of conviction under this agreement, is: not more than five (5) years

imprisonment; not more than a $250,000 fine, or both; not more than three (3) years supervised release; the costs of prosecution; and a $100 special assessment fee.

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury.

A violation of the conditions of probation or supervised release may result in a separate prison sentence.

III. STIPULATION OF FACTUAL BASIS AND FACTS RELEVANT TO SENTENCING

The parties agree that there is no dispute as to the material elements which establish a factual basis of the offense of conviction.

Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties believe are relevant, pursuant to §1B1.3, for computing the appropriate guideline range. To the extent the parties disagree about the facts relevant to sentencing, the statement of facts identifies which facts are known to be in dispute at the time of the plea. (§6B1.4(b)) The parties agree that disputed facts will be resolved by the Court at sentencing.

The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the guideline computation (§1B1.3) or to sentencing in general (§1B1.4). In "determining the factual basis for the sentence, the Court will consider the stipulation [of the parties], together with the results of the presentence investigation, and any other relevant information." (§6B1.4 Comm.)

The parties agree that the government's evidence would show that the date on which conduct relevant to the offenses (§1B1.3) began is on or about January 1, 1998.

The parties agree that the government's evidence would establish the following:

Background.

A. During the times material to this case, the defendant owned and operated a business primarily involved in providing lawn care, landscaping and general outdoor maintenance services for commercial properties. Defendant Benjamin operated this business as a sole proprietorship under the name "High Energy Maintenance Co." (hereinafter, "High Energy").

B. Until in or about January 2001, defendant Benjamin operated the business out of Ada, Oklahoma, where he resided, and provided commercial landscaping, lawn care, and maintenance services for properties located primarily within the State of Oklahoma. In or about January or February 2001, defendant Benjamin re-located to the State of Colorado and began operating High Energy's business out of Denver and then Aurora, Colorado, where he resided.

C From at least 1998 through 2000, defendant Benjamin had four main customers for his lawn care, landscaping and general outdoor maintenance business, including Wal-Mart Stores, Inc. (Wal-Mart"), the Bentonville, Arkansas based, publicly traded retailer of consumer products and services. Wal-Mart was defendant Benjamin's largest customer throughout this period of time and remained his primary, if not sole, customer when Benjamin re-located the business to Colorado.

Offense Conduct Concerning Count 56 And Related Tax Evasion.

D. In or about April 2002, the Internal Revenue Service's Criminal Investigation Division ("IRS-CID") received information from defendant Benjamin's then-estranged spouse that Benjamin had received significant business income from his operation of High Energy over the past several years. Defendant Benjamin's estranged spouse provided IRS-CID this information in the form of payment summary records which her divorce counsel had received from defendant

Benjamin's four main customers. IRS records revealed that defendant Benjamin had not filed federal income tax years either separately or jointly with his spouse since 1997. Nor was there any record of the defendant having filed state income tax returns with the State of Oklahoma since that time. Further, neither the federal nor state tax records indicated any federal or state income tax payments by defendant Benjamin for any income earned by him since 1997. Based on the referral and records check, IRS-CID commenced a criminal investigation concerning defendant Benjamin's failure to file federal income tax returns and to pay federal income taxes since 1997.

E. As part of the criminal investigation, IRS-CID confirmed with the defendant's High Energy customers the accuracy of the payment information which it had been supplied. Payment information and records from defendant Benjamin's four main confirmed that defendant Benjamin had received at least approximately the following in total gross receipts or sales from his operation of High Energy during the specified years:

Year	**Total Gross Receipts/Sales**
1998	$117,065.84
1999	$193,228.40
2000	$200,625.02
2001	$628,550.92
Total	$1,139,470.18

Based on these total gross receipts and sales for High Energy, defendant Benjamin had gross income requiring him to file federal income tax returns for each of the years 1998 through 2001.

F. As part of her referral, defendant Benjamin's estranged spouse also provided IRS-CID with copies of joint federal income tax returns for the couple for tax years 1998 and 1999 which defendant Benjamin had represented to her had been prepared by a paid tax preparer, H &R Block,

and filed by him on the couple's behalf. As part of its investigation, IRS-CID confirmed with H&R Block that it had, in fact, prepared joint tax returns for defendant and his spouse for 1998 and 1999 but not for any subsequent years. The tax returns represented that defendant Benjamin and his spouse had total income of $33,412 and were owed a $2,392 refund for 1998 and had total income of $29,735 and were owed $472 in additional taxes for 1999. IRS-CID discovered, however, that the information that defendant Benjamin had provided to his paid tax preparer was incomplete, false and misleading: Defendant Benjamin only provided his paid tax preparers information about his business income for these years from Wal-Mart, Benjamin's only customer to submit to the IRS an IRS Form 1099 reporting its payments to him; he concealed from the preparer the income his business had earned from its other customers, so that the prepared returns substantially under reported his true business income. Moreover, defendant Benjamin failed to provide this paid tax preparers any documentation to substantiate a handwritten list of business expenses he supplied them to offset his business income. Defendant Benjamin did not, in any event, file these prepared returns. Nor did he seek any filing extensions for the years covered by these returns after they were prepared for him.

G. The criminal investigation revealed that defendant Benjamin, having earned income from his High Energy business sufficient to require him to file federal income tax returns for the years 1998 through 2001, took a number of steps rendering it more difficult to determine his true tax liability and hence attempted to evade the assessment of his income tax liability for those years. In addition to failing to file income tax returns, while operating in Oklahoma, defendant Benjamin, among other things, used his business account interchangeably for both business and personal expenses. He paid for personal expenses through disbursements from his business account, thereby

concealing part of his income from his business through such expenditures. He also made frequent cash withdrawals from the business account, which were either then used for his personal expenses or to pay employees. Similarly, defendant Benjamin would periodically not deposit checks that he received from High Energy customers as payment for services but would simply negotiate the checks for cash that he would then use as he saw fit. Other times, defendant Benjamin would deposit only a portion of the revenue checks received by him from his High Energy customers in his business account and would receive the remainder of the proceeds in cash. Each of these acts rendered it more difficult to determine defendant Benjamin's true business income and expenses from his High Energy business for the years 1998 through 2000 and, as a consequence, made it more difficult to determine his true income tax liability for those years.

H. The criminal investigation determined that defendant Benjamin continued these same practices upon relocating his business to Colorado in 2001. Defendant Benjamin set up a business account for High Energy with a bank in Colorado but, as with his Oklahoma account, used this business account interchangeably as well for both business and personal expenses. He continued to his practice of negotiating checks from customers, in whole or in part, for cash, thereby avoiding the deposit of some or all of his business receipts in his business account, and continued to make some payments for labor and other expenses in cash. He also continued generally to live a cash life style. These practices collectively rendered it more difficult to determine his true income tax liability for the income that he earned through High Energy in 2001.

I. On or about June 26, 2002, IRS-CID agents interviewed defendant Benjamin at his residence in Aurora, Colorado. The agents asked him questions about his financial affairs and other matters pertaining to his income and income tax liability for the years 1998 through 2001. During

the course of the interview, defendant Benjamin reviewed with agents the written summaries of customers' payments to High Energy for those years. Benjamin confirmed the accuracy of the payment summaries but made a number of false and misleading statements to agents that had the effect of making it more difficult to determine his true income tax liability for the years under investigation and hence constituted affirmative acts of income tax evasion.[1]

In addition to falsely asserting that he had filed federal and state income tax returns for tax years 1998 through 2000, defendant Benjamin falsely denied that he had had regular employees for his High Energy business over the course of these years and instead gave the false impression that he simply hired friends and acquaintances to help him on an ad hoc basis. Nor did Benjamin identify any of the persons who had worked for him for him, asserting that he could not remember their names. (IRS-CID agents later learned from the investigation that defendant Benjamin had at least eight consistent employees for High Energy over these years, whom he paid mostly in cash or with cashier's checks. One of these regular employees was an uncle who had helped him relocate to Colorado.)

Defendant Benjamin also denied that he had any retained any records for his High Energy business, either for the time that he had operated out of Oklahoma or for the previous year, when he had operated in Colorado. (In fact, IRS-CID agents learned from interviewing defendant's estranged spouse and his uncle that he had not left his business records in Oklahoma, as he had claimed, and that he had file cabinets presumably containing business records with him when he

---

[1] The parties agree, that while the defendant provided materially false statements to law enforcement agents, the false statements did not significantly obstruct or impede the official investigation or prosecution of the instant offenses for purposes of U.S.S.G. § 3C1.1. The statements are set forth herein because they constitute affirmative acts of tax evasion, as alleged in the indictment.

relocated to Colorado.)

During the interview, defendant Benjamin also falsely denied having any bank accounts in Colorado which he used for his business. (IRS-CID agents later learned from the investigation that defendant had opened up two accounts in Colorado between February 2001 and May 2001, one of which served as his operating account for High Energy.)

J. In spite of the foregoing affirmative acts of evasion, IRS-CID agents determined from their review of defendant's bank account records, together with other information derived from the investigation, that defendant Benjamin, in fact, had had substantial income tax liability for 1999 (the subject of Count 56) as well as for each of the other years for which defendant Benjamin failed to file tax returns, years which are the subject of the indictment (1998, 2000, and 2001). These tax liabilities, which remain outstanding and constitute additional tax due and owing and tax loss to the government, are estimated as follows:

Year	**Total Tax Due And Owing**
1998	$6,846.33
1999	$17,392.33
2000	$5,858.43
2001	$99,299.82
Total	$129,396.91

Offense Conduct Concerning Count 3 And The Related Scheme to Defraud Wal-Mart.

K. During the times material to this case, Wal-Mart typically arranged for outside vendors or contractors to provide lawn care and other outdoor maintenance services for many of its retail stores. These outdoor maintenance services would include sweeping, cleaning and trash

removal from store parking lots and, depending on weather conditions, lawn mowing and other lawn care and snow removal. Wal-Mart typically contracted with these outside vendors and contractors to provide such services both with respect to commercial properties where it had actively operating stores (hereinafter, "active stores" or "open stores") and commercial properties which it still owned or leased, and for which it continued to have maintenance responsibilities, but on which the situated stores were no longer open to the public or otherwise operating (hereinafter, "dark stores" or "dark locations"). Wal-Mart would have its local store managers directly arrange for and supervise the lawn care and outdoor maintenance for its open stores but would arrange for and supervise the outdoor maintenance for its"dark store" locations out of its corporate headquarters in Bentonville, Arkansas.

L. Defendant Benjamin, through his company High Energy, was one of the outside contractors that provided lawn care and outside maintenance services to Wal-Mart for both its "open store" and "dark store" locations. Until in or about early 2001, when he re-located his business to the State of Colorado, defendant Benjamin and his company serviced several of Wal-Mart's "active stores" in Ada, Oklahoma and its surrounding areas. Benjamin and his company also provided lawn care and other outdoor maintenance services for Wal-Mart "dark store" locations in various parts of Oklahoma and in nearby areas within the State of Texas. Upon re-locating to Colorado, defendant Benjamin began to provide regular outdoor maintenance services to two Wal-Mart open store locations in the Denver, Colorado metropolitan area. Defendant Benjamin also continued to bill Wal-Mart for maintenance work at "dark store" locations in Oklahoma and Texas and began billing Wal-Mart's corporate office for maintenance work at other "dark store" or non-operational locations throughout various of parts of the United States.

M. During the course of its criminal investigation, IRS-CID learned that Wal-Mart had terminated defendant Benjamin and his business, High Energy, as a contractor in early 2002 based on suspected fraudulent billings by Benjamin over the course of 2001 and into mid-January 2002. The suspected fraudulent billings, which became the subject of the criminal investigation, related to the outdoor maintenance services which Benjamin's company had ostensibly provided through sub-contractors at various actual and supposed Wal-Mart "dark store" locations throughout the country. Primarily through these billings, defendant Benjamin's revenues from Wal-Mart in 2001 increased to a level which was more than four times the revenues he had received from Wal-Mart in the previous years for which it was his customer

N. Defendant Benjamin began to hold himself out to Wal-Mart as being capable of doing outdoor maintenance work nationwide around the time he re-located his business to Colorado. At some point proximate to his re-location, defendant Benjamin began to represent to personnel in Wal-Mart's corporate headquarters that he had a series of sub-contractors throughout the nation who would and could do the maintenance work on his behalf and who would and could be monitored by his relatives. Defendant Benjamin made these representations as part of an effort to induce Wal-Mart to consider his company for outdoor maintenance work in locations outside his previous areas of operation (i.e., parts of Oklahoma, Texas and Colorado). Based on these representations, over the course of 2001, defendant Benjamin was offered opportunities to bid for and was awarded "dark store" maintenance work at various locations outside of his pre-existing areas of operations. These additional areas included Wal-Mart "dark store" locations in Wisconsin, Iowa, Wyoming, New Jersey, Massachusetts, and New Hampshire. Over time, defendant Benjamin also solicited Wal-Mart's corporate headquarters to award his company outdoor maintenance work at other "dark

store" locations throughout the country which he would suggest. With respect to both the referred and solicited "dark store" outdoor maintenance work, defendant Benjamin would submit written work proposals which led Wal-Mart corporate personnel to believe that he and his company were capable of and in a position to perform the particular work.

O. After being awarded the foregoing outdoor maintenance work, defendant Benjamin would submit invoices for the work to Wal-Mart's corporate headquarters. The invoices would be submitted to Wal-Mart periodically in batches, together with invoices billing Wal-Mart for outdoor maintenance services at dark store locations previously serviced by defendant Benjamin. Defendant Benjamin would send these batches of invoices through facsimile interstate wire transmissions from locations in Aurora and Denver, Colorado to Wal-Mart's corporate headquarters in Bentonville, Arkansas. Wal-Mart would thereafter pay defendant Benjamin on the batches of invoices by mailing him checks addressed to a post office box he maintained in Colorado.

P. The invoices which defendant Benjamin faxed to Wal-Mart's corporate headquarters billing Wal-Mart for outdoor maintenance work at the additional "dark store" locations (i.e., those beyond the areas previously serviced by High Energy) were fraudulent, in that they billed Wal-Mart for work that defendant's company never performed or attempted to perform at the locations. A number of these invoices billed Wal-Mart for maintenance work not warranted by weather conditions at the particular locations (such as for snow removal in places where no snow had fallen) or not warranted by property conditions (such as for particular yard or lawn work for "dark store" locations that either did not have a yard or had minimal lawn space). Other of defendant Benjamin's fraudulent invoices billed Wal-Mart for outdoor maintenance for locations that Wal-Mart was not responsible for maintaining either because the landlord of the property assumed the maintenance

responsibilities or because the location had already been sold to another party. Still others of the fraudulent invoices billed Wal-Mart for dark store outdoor maintenance for locations that Wal-Mart had already arranged to be serviced through other contractors.

Q. Contrary to his representations to Wal-Mart, moreover, defendant Benjamin did not have a pre-existing network of subcontractors available to perform the maintenance work on his behalf at these various locations; defendant Benjamin had individuals and equipment in place only sufficient to service the previously established Wal-Mart locations in Oklahoma and Texas and certain particular additional locations in Colorado.

R. Among the fraudulent invoices that defendant Benjamin submitted to Wal-Mart for payment were four particular invoices identified in Count 3 of the Indictment in this case. As set forth therein, on or about March 4, 2001, defendant Benjamin included these four invoices in a facsimile transmission from Colorado to Wal-Mart's corporate headquarters in Arkansas. The invoices billed Wal-Mart for fictitious snow removal services purportedly performed by or on behalf of High Energy at two different dark store locations in Wisconsin and in particular dark store locations in Iowa and Wyoming.

S. Wal-Mart began suspecting that defendant Benjamin was submitting fraudulent invoices to it in or about December 2001, when Wal-Mart personnel received and questioned a particular invoice from defendant Benjamin billing Wal-Mart for snow removal at one of its dark store locations in Miami, Oklahoma. A Wal-Mart employee suspected that the invoice was in error because it had not apparently snowed at that location during the billed period. Defendant Benjamin initially responded to inquiries about the invoice by falsely claiming that the invoice had been the result of a clerical error by his "secretary," a fictitious employee, and that the invoice was meant to

bill for snow removal at another location in Oklahoma. After Wal-Mart personnel determined that there had not been any snow to remove at this second Oklahoma location, they referred defendant Benjamin's billings to Wal-Mart's internal real estate accounting department, which reviewed defendant Benjamin's past invoices for discrepancies. The Wal-Mart real estate department found from its review that defendant Benjamin had submitted invoices for work which was fictitious in various respects on numerous past occasions and had been paid by Wal-Mart for this fictitious work. Defendant Benjamin's billings were then referred to a Wal-Mart fraud investigator for further internal investigation.

T. As part of the internal investigation, the Wal-Mart fraud investigator had a telephone conversation with defendant Benjamin in February 2002 concerning his status as a Wal-Mart contractor and discrepancies and problems that Wal-Mart had found with various of his dark store maintenance billings. During the course of the conversation, defendant Benjamin maintained that he did, in fact, have a set of sub-contractors who he had been using to perform the billed dark store maintenance work on his behalf. He agreed to call the fraud investigator back with a list of their names and the locations that they serviced on his behalf. Defendant Benjamin volunteered nevertheless that the last batch of invoices that he had sent to Wal-Mart's corporate headquarters in mid-January 2002, which were under review by Wal-Mart, were "no good" and could be ignored and discarded by the corporation. Defendant Benjamin subsequently failed to supply the requested sub-contractor information and ceased further contact with Wal-Mart. Wal-Mart thereafter formally terminated its relationship with defendant Benjamin and his company.

U. Based on the evidence gathered in the course of the criminal investigation, between February 2001 and January 2002, defendant Benjamin made twenty two separate facsimile

transmissions of fraudulent invoices to Wal-Mart. Defendant Benjamin sought to bill Wal-Mart a total of $456,605 through these fraudulent invoices. Wal-Mart actually paid out $417,583 on the the fraudulent invoices transmitted from February 2001 through some time in December 2001. Wal-Mart stopped making payments on defendant Benjamin's invoices thereafter. Wal-Mart has not recouped any of the money paid out to defendant Benjamin on the fraudulent invoices.

IV. SENTENCING COMPUTATION

The parties acknowledge and agree that, pursuant to United States v. Booker, __ U.S. __, 2005 WL 50108, at *27 (Jan. 12, 2005), the Court, in sentencing the defendant in this case, must consult and take into account the sentencing guidelines, issued pursuant to 28 U.S.C. § 994(a), but is not bound by these guidelines.

The parties understand that the Court may impose any sentence, up to the statutory maximum, regardless of any guideline range computed, and that the Court is not bound by any position of the parties. (§6B1.4(d)) The Court is free, pursuant to §§6A1.3 and 6B1.4, to reach its own findings of facts and sentencing factors considering the parties' stipulations, the presentence investigation, and any other relevant information. (§6B1.4 Comm.; §1B1.4)

To the extent the parties disagree about the sentencing factors, the computations below identify the factors which are in dispute. (§6B1.4(b))

The parties agree that, pursuant to U.S.S.G. Section 1B1.11(b) (Nov. 2004), based on *ex post facto* concerns, the 2000 Guidelines Manual should be applied in its entirety in computing the defendant's sentencing guideline range. The parties' sentencing computations, therefore, use the 2000 Guidelines Manual.

The parties agree that the offenses of conviction set forth in Count 3 (wire fraud) and Count

56 (income tax evasion) should be considered separate and distinct groups for the purpose of sentencing guideline calculations. Accordingly, offense level calculations should be done with each respect to each of these groups and then the rules concerning multiple groups should be applied. U.S.S.G. §3D1.1.

Offense Level for Count 3 and Its Relevant Conduct.

A. The base guideline is U.S.S.G. §2F1.1, with a base offense **level of 6**.

B.1. Specific offense characteristic U.S.S.G. §2F1.1(b)(1)(J) applies, increasing the offense score **9 levels**, because the applicable loss is more than $350,000 but not more than $500,000.

B.2. Specific offense characteristic U.S.S.G. §2F1.1(b)(2) applies, increasing the offense score **2 levels**, because the offenses of conviction involved more than minimal planning.

C. There are no victim-related, role-in-offense, and/or obstruction adjustments which apply in this case. U.S.S.G. Parts 3A-3C.

D. The adjusted offense level for this group would therefore be **17**.

Offense Level for Count 56 and Relevant Conduct.

E. The base guideline for the tax evasion offense set forth in Count 56 of the Indictment in this case is U.S.S.G. §2T1.1(a), which adopts, for its base offense level, the offense level from the tax table set forth in U.S.S.G. §2T4.1 for cases involving tax losses. Because the tax loss associated with the offense of conviction and defendant's relevant conduct has been calculated by the government to be approximately $129,397, the base offense level is **Level 15** (U.S.S.G. §2T4.1(J)(tax loss more than $120,000 but not more than $200,000)).

F. Specific offense characteristic U.S.S.G. §2T1.1(b)(1) applies, increasing defendant's

offense score by **2 levels**, because the defendant failed to report or to correctly identify as a source of income on his 2001 federal income tax return or other return with the IRS, in excess of $10,000 he received from Wal-Mart from criminal activity charged in Counts 1 through 48 of the Indictment.

G. There are no victim-related, role-in-offense, obstruction and/or multiple count adjustments which apply to this group.. U.S.S.G. Parts 3A-3D.

H. The adjusted offense level for this group would therefore be **17**.

Multiple Count Adjustment (U.S.S.G. Part 3D).

I. Pursuant to Section 3D1.4(a), the two above groups correspond to a total of two units because their offense levels are the same and so they are equally serious. Because the total number of units is two, the offense level of **17** (set forth in paragraph D and H above) should be increased by **2 levels**, making the final adjusted offense level **19**.

Total Offense Level.

J. The defendant currently appears to be eligible to receive a **3-level** offense level reduction for acceptance of responsibility, pursuant to U.S.S.G. §3E1.1 based on his timely notification of his intention to resolve this case by guilty plea. The resulting offense level would therefore **16**.

Criminal History.

K. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court. Facts currently known to the parties regarding the criminal history indicate that the defendant has no prior convictions or sentences which would be considered within the applicable period for calculating a criminal history category. Based on the parties' current information, if no other information were discovered, the defendant's

criminal history category would be **Category I** .

L. Assuming the (tentative) criminal history facts of (K) above, the career offender/criminal livelihood/armed career criminal adjustments would not apply.

M. The guideline range resulting from the estimated offense level of (J) above, and the (tentative) criminal history category of (K) above, is **21-27 months**. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, an estimated offense level 16 above could conceivably result in a range from 21 months (bottom of Category I), to 57 months (top of Category VI). The sentence would be limited, in any case, by the statutory maximum.

N. Pursuant to guideline §5E1.2, assuming the estimated offense level of (J) above, the fine range for this offense would be $5,000 to $50,000, plus applicable interest and penalties.

O. Pursuant to guideline §5D1.2, if the Court imposes the term of supervised release, that term shall be at least two years but not more than three years.

P. Restitution is either mandatory under U.S.S.G. §5E1.1(a)(1) or otherwise contemplated under U.S.S.G. §5E1.1(a)(2).

V. WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE

The parties believe the sentencing range resulting from the proposed plea agreement is appropriate because readily provable relevant conduct is disclosed, the sentencing guidelines take into account all pertinent sentencing factors with respect to this defendant, and the charge to which the defendant has agreed to plead guilty adequately reflects the seriousness of the actual offense behavior.

This document states the parties' entire agreement. There are no other promises, agreements

(or "side agreements"), terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the government nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

Date: 1/3/06

Goderick Augustus Benjamin
Defendant

Date: 1/5/06

Edward A. Pluss, Esq.
Assistant Federal Public Defender
Attorney for Defendant

Date: 1/5/06

Kenneth M. Harmon
Assistant U.S. Attorney