

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

v. :

MATTHIAS A. SCHWABE :

CRIMINAL NO. 06-659-03

GOVERNMENT'S CHANGE OF PLEA MEMORANDUM

I. INTRODUCTION/BACKGROUND

An indictment was issued in the above captioned case on November 28, 2006, charging Matthias Schwabe in Count Five with mail fraud, in violation of 18 U.S.C. § 1341, and in Count Eleven with filing a false tax return, in violation of 26 U.S.C. § 7206(1). These charges arise out of the defendant obtaining approximately \$10,000 from Philadelphia Airport Services by means of false and fraudulent pretenses and representations in 2003-2004, and out of the defendant's failure to report \$83,000 on his federal tax return for 2003, and overstating the basis of the house he sold by approximately \$20,000 on his federal tax return in 2004.

II. TERMS OF PLEA AGREEMENT

The plea agreement in this case has been reduced to writing and the signed original will be filed with the Court during the Rule 11 colloquy. The plea agreement, a copy of which is attached, can be summarized in pertinent part as follows:

1. The defendant agrees to plead guilty to Counts Five and Eleven of this indictment.
2. The defendant agrees to pay the special victims/witness assessment in the amount of \$200 at such time as directed by the court.

3. The defendant agrees to cooperate fully with the Internal Revenue

Service as follows:

- a. Prior to sentencing, the defendant will properly execute and deliver to the IRS Examination Division IRS Form 4549 or IRS Form 870 for the years 2001 and 2003 through 2004.
- b. The defendant will pay \$27,701 of unpaid tax due as calculated for purposes of this criminal case and further agrees to pay all remaining personal income taxes, interest and penalties finally determined to be due and owing within the period of supervised release/probation. The defendant further agrees to pay all state and local taxes due and owing for these years within the period of supervised release/probation.
- c. Defendant agrees to provide the IRS Examination Division, prior to sentencing, with all requested documents and information for the purpose of a civil audit.
- d. The defendant further agrees not to file any claims for refund of taxes, penalties and interest for the years 2001, and 2003 through 2004 or for any other amounts paid pursuant to this agreement.
- e. Defendant agrees that subparagraphs a through d of this paragraph are appropriate conditions of supervised release/probation.
- f. Defendant agrees that he will make no objection to the entry of an order under Fed.R.Crim.P. 6(e) permitting the IRS Criminal

Investigation Division to disclose to the IRS Examination and Collection Divisions (for purposes of a civil audit) all of the documents obtained, and the IRS reports produced, during the criminal investigation, whether or not such documents or reports are considered to be grand jury material within the meaning of Rule 6(e).

4. The defendant agrees to be debriefed and to cooperate in the government's ongoing investigation, and to testify at future proceedings.
5. The defendant will request that the Court postpone his sentencing until after all trials at which he will be testifying, if requested by the government.
6. The defendant voluntarily and expressly waives all his rights to appeal or collaterally attack his conviction, sentence or any matter relating to this prosecution unless the government appeals, his sentence exceeds the statutory maximum, the sentencing judge erroneously departs upward from the otherwise applicable sentencing guideline range, or the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 125 S. Ct. 738 (2005), imposes an unreasonable sentence above the final Sentencing Guideline range determined by the Court.

If the government determines that the defendant has fulfilled his obligations as set forth in the plea agreement, the government will:

7. advise the Court of the nature and extent of the cooperation provided by the defendant;

8. make a motion for departure from the Sentencing Guidelines, pursuant to Section 5K1.1, if the government determines that the defendant has provided substantial assistance in the investigation or prosecution of another person;

9. make whatever sentencing recommendation it deems appropriate.

Pursuant to § 6B1.4 of the Sentencing Guidelines, the parties enter into the following stipulations. It is understood and agreed that: (1) the parties are free to argue the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments and departures; (2) these stipulations are not binding upon either the Probation Department or the Court; and (3) the Court may make factual and legal determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

(a) The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under Guideline Section 3E1.1(a).

(b) The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty and timely providing complete information about his own involvement in the offense making the defendant eligible for an additional 1-level downward adjustment under Guideline Section 3E1.1(b), to the extent his offense level is 16 or greater.

(c) With respect to Count 11, the parties agree and stipulate, as follows:

(i) the tax loss for the failure to report \$83,000 as income in 2003 is \$22,207;

(ii) the tax loss from overstating the basis of the house he sold by approximately \$20,000 in 2004 is approximately \$4050;

(iii) in addition, defendant understated his income by approximately \$4661 in 2001 because he failed to report income from a company he co-founded, resulting in a tax loss of \$744; the parties agree and stipulate that this tax loss is to be included in the total tax loss, pursuant to U.S.S.G. § 1B1.3, just as if defendant also had been charged in the Indictment with failing to report this income in 2001; and,

(iv) the specific offense characteristics in U.S.S.G. § 2T1.1(b) do not apply.

(v) based on paragraphs (c)(i)-(iv), the total tax loss is \$27,701, and the appropriate offense level is therefore 12, pursuant to U.S.S.G. §§ 2T1.1(a)(1) and 2T4.1(D).

(d) With respect to Count 5, the parties agree and stipulate that the provable loss amount was approximately, but no more than, \$10,000, and that the appropriate offense level is therefore 9, pursuant to U.S.S.G. §§ 2B1.1(a)(1) and 2B1.1(b)(1)(B). The parties further agree and stipulate that no restitution is due because defendant paid back into his employer's petty cash fund all of the funds he used without authorization.

(e) The parties agree and stipulate that based on paragraphs 9(a) - 9(d) above, the offense level is 12.

No other promises, agreements or conditions have been entered into other than those set forth in the plea agreement.

III. ELEMENTS

The elements of mail fraud, in violation of Title 18, United States Code, Section 1341 are:

1. that the defendant knowingly devised or participated in a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises;
2. that the defendant acted with the specific intent to defraud; and
3. that in advancing, furthering, or carrying out the scheme, the defendant used the mails, or private or commercial interstate carrier, or caused the mails, or private or commercial interstate carrier, to be used.

The elements of filing a false return, in violation of Title 26, United States Code, Section 7206(1), are:

1. that the defendant made and subscribed a return, statement, or other document that was false as to a material matter;
2. that the return, statement, or other document contained a written declaration that it was made under the penalty of perjury;
3. that the defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and
4. that the defendant acted willfully, with the specific intent to violate the law.

IV. MAXIMUM STATUTORY SENTENCE

The maximum sentence for mail fraud is 20 years imprisonment, a three year period of supervised release, a \$250,000 fine, and a \$100 special assessment.

The maximum sentence for making a false tax return is 3 years imprisonment, a one year period of supervised release, a \$100,000 fine, and a \$100 special assessment.

The total maximum sentence is thus 23 years imprisonment, a three year period of supervised release, a \$350,000 fine, and a \$200 special assessment.

V. EVIDENCE IN SUPPORT OF THE CHARGES

_____ From January 2003 through December 2004, Philadelphia Airport Services (PAS) maintained a petty cash checking account at Sovereign Bank, and defendant Schwabe had signing authority for this petty cash fund as part of his duties as facilities maintenance manager for PAS at the Philadelphia International Airport. When replenishment of the petty cash fund was needed, Schwabe would submit a reimbursement request to Affiliated Building Services, which was part of the PAS joint venture, in Houston, Texas. Despite the fact that Schwabe was not permitted to use money from the PAS petty cash account to pay for his personal expenses, he spent approximately \$10,000 from the account on personal expenses such as food, clothing, and entertainment, and he falsely and fraudulently represented to PAS that these expenses were for the benefit of PAS. Specifically, on or about April 11, 2003, Schwabe caused to be delivered, by the United States mail to Affiliated Building Services in Houston, Texas, a payment request for replenishment of the PAS petty cash checking account.

On or about March 7, 2003, T. Milton Street, Sr., gave a check to defendant Schwabe to help him pay for home renovations. The check was made out for \$83,000, and

Schwabe made the check payable to his home contractor, so that PAS would not find out about the payment. Despite receiving this additional income, on or about April 15, 2004, the defendant willfully made and subscribed a U.S. Individual Income Tax Return, Form 1040, for the calendar year 2003, which was verified by a written declaration that it was made under the penalties of perjury and filed it with the Internal Revenue Service, Philadelphia Service Center, Philadelphia, Pennsylvania, knowing that the income tax return was not true in that the return failed to report the \$83,000 received from T. Milton Street, Sr.

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

ANTHONY J. WZOREK
Assistant United States Attorney

JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

CERTIFICATION

I certify that the government's change of plea memorandum has been electronically filed and is available for viewing and downloading from the ECF system. In addition, a true and correct copy of the government's change of plea memorandum has been sent by facsimile to:

Harvey Sernovitz, Esq.
Two Penn Center Plaza, Suite 910
1500 J.F.K. Boulevard
Philadelphia, PA 19102

ANTHONY J. WZOREK
Assistant United States Attorney

DATE: _____