

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)

v.)

JIMMY A. DUNN)

Case No. 3.09-cr-44

JUDGE Phillips / G. W. Taylor

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Jimmy A. Dunn, and the defendant's attorney, Norman McKeller, have agreed upon the following:

1. The defendant will plead guilty to a one-count information charging a violation of Title 26, United States Code, Section 7201, that is tax evasion.

The punishment for this offense is as follows a maximum sentence of five years imprisonment, a fine of \$250,000, or both, together with the costs of prosecution, a term of supervised release of 3 years, and a mandatory assessment of \$100.

2. The parties agree that the appropriate disposition of this case would be the following:

- a) The Court may impose any lawful term of imprisonment up to the statutory maximum;
- b) The Court may impose any lawful fine up to the statutory maximum;
- c) The Court may impose any lawful term of supervised release up to the statutory maximum;
- d) The Court may order that Defendant pay the costs of prosecution;
- e) The Court will impose a special assessment fee as required by law; and

f) The Court may order forfeiture as applicable and restitution as appropriate.

3. The defendant has read the indictment, discussed the charges and possible defenses with defense counsel, and understands the crime charged. The defendant is pleading guilty because the defendant is in fact guilty. In order to be guilty, the defendant agrees that each of the following elements of the crime must be proved beyond a reasonable doubt:

- a) The existence of a tax deficiency;
- b) That the Defendant did an affirmative act constituting an evasion or attempted evasion of the tax; and
- c) That the Defendant acted willfully.

4. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

a) From January 2001 through March 2002, Jimmy A. Dunn ("Dunn") worked and earned income providing mortgage broker-related services.

b) From March 2002 through December 2006, Dunn owned, operated and earned income from Southern Mortgage Group, a business that provided mortgage broker-related services.

c) For tax years 2001, 2002, 2003, 2004, 2005 and 2006, Dunn timely filed no Department of Treasury - Internal Revenue Service Form 1040 U.S. Individual Income Tax Returns.

d) However, following Dunn's receipt of a Form 1040 "Substitute For Return" (hereinafter "SFR") for tax year 2001, which had been prepared by the Internal Revenue Service,

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based on Form W-2 and Form 1099 information provided by Dunn's employers, Dunn executed and returned that SFR knowing that it substantially understated his income for tax year 2001.

Specifically, Dunn fraudulently executed and filed an SFR that stated his income for tax year 2001 as \$5,380 and his total income tax for that tax year of \$537.00.

e) Moreover, following Dunn's advisement by the Special Agent Bruce McMillan, Internal Revenue Service, Criminal Investigation, of an ongoing investigation of him for tax evasion, Dunn filed an amended return for tax year 2001, and filed for the first time, tax returns for tax years 2002, 2003, 2004, 2005, 2006 that identified his income and tax due and owing as the following:

- 2001 - Taxable Income of \$52,655; Total Tax of \$16,580, with a Tax Due and Owing of \$15,409.
- 2002 - Taxable Income of \$158,374; Total Tax of \$61,816, with a Tax Due and Owing of \$61,816.
- 2003 - Taxable Income of \$165,216; Total Tax of \$53,333, with a Tax Due and Owing of \$53,333.
- 2004 - Taxable Income of \$117,520; Total Tax of \$38,696, with a Tax Due and Owing of \$38,696.
- 2005 - Taxable Income of \$175,195; Total Tax of \$49,606, with a Tax Due and Owing of \$49,606.
- 2006 - Taxable Income of \$80,592; Total Tax of \$29,360, with a Tax Due and Owing of \$29,360.

f) For the purpose of concealing his income from the IRS through the concealment of personal wealth and assets, and as affirmative acts of evasion for tax years 2001, 2002, 2003, 2004,

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2005, 2006, on or about August 4, 2004, and/or on or about November 9, 2004, Dunn transferred the ownership of the following properties from his name into various trusts:

- Real property described as Lot 23, Polo Club Subdivision Unit 1 from the name Jimmy A. Dunn and wife to “Tract 23 Real Estate Trust.”
- Real property described as Lot 24, Polo Club Subdivision Unit 1 from the name Jimmy A. Dunn and wife to “Tract 24 Real Estate Trust.”
- Real property described as Lot 28, The Racquet Club Gettysvue from the name Jimmy A. Dunn and wife to “The Gettysvue Way Real Estate Trust.”
- Personal property described as a 2000 Toyota 4Runner from the name Jimmy A. Dunn to “2000 4 Runner Trust.”

g) For the purpose of concealing his income from the IRS, and as affirmative acts of evasion for the tax years 2002, 2003, 2004 and 2005, Dunn, throughout the years 2002, 2003, 2004, and 2005, presented for immediate cash payment to SunTrust Bank – the location of the business account for Southern Mortgage Group – numerous checks payable to Southern Mortgage Group for mortgage broker-related services. By presenting these checks for immediate cash payment, Dunn prevented the checks from posting to his business’ bank account, thereby concealing his income from the IRS in the event of an audit. The IRS did not audit Southern Mortgage Group during the years 2002, 2003, 2004, 2005.

h) During the calendar 2001, Jimmy A. Dunn, a resident of Knoxville, Tennessee, had and received taxable income in the sum of \$52,655. Upon that taxable income, there was owing to the United States of America an income tax of \$16,580. Well knowing and believing the foregoing facts, Jimmy A. Dunn, on or about April 17, 2002, in the Eastern District of Tennessee, did willfully attempt to evade and defeat the income tax due and owing by him to the United States of

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America for the calendar year by failing to make an income tax return on or before April 17, 2002, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay to the Internal Revenue Service the income tax, and by filing a fraudulent Form 1040 "Substitute for Return" claiming a taxable income of \$5,380 and a tax of \$537 well knowing and believing the foregoing facts, and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct income. For tax year 2001, Jimmy A. Dunn's willful tax evasion resulted in a tax loss to the United States in the amount of \$15,409.

i) During the calendar 2002, Jimmy A. Dunn, a resident of Knoxville, Tennessee, had and received taxable income in the sum of \$158,374. Upon that taxable income, there was owing to the United States of America an income tax of \$61,816. Well knowing and believing the foregoing facts, Jimmy A. Dunn, on or about April 15, 2003, in the Eastern District of Tennessee, did willfully attempt to evade and defeat the income tax due and owing by him to the United States of America for the calendar year by failing to make an income tax return on or before April 15, 2003, as required by law, to any proper officer of the Internal Revenue Service, by concealing and attempting to conceal from all proper officers of the United States of America his true and correct income. For tax year 2002, Jimmy A. Dunn's willful tax evasion resulted in a tax loss to the United States in the amount of \$61,816.

j) During the calendar 2003, Jimmy A. Dunn, a resident of Knoxville, Tennessee, had and received taxable income in the sum of \$165,216. Upon that taxable income, there was owing to the United States of America an income tax of \$53,333. Well knowing and believing the foregoing facts, Jimmy A. Dunn, on or about April 15, 2004, in the Eastern District of Tennessee, did willfully attempt to evade and defeat the income tax due and owing by him to the United States of America for the calendar year by failing to make an income tax return on or before April 15, 2004,

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as required by law, to any proper officer of the Internal Revenue Service, by concealing and attempting to conceal from all proper officers of the United States of America his true and correct income. For tax year 2003, Jimmy A. Dunn's willful tax evasion resulted in a tax loss to the United States in the amount of \$53,333.

k) During the calendar 2004, Jimmy A. Dunn, a resident of Knoxville, Tennessee, had and received taxable income in the sum of \$117,520. Upon that taxable income, there was owing to the United States of America an income tax of \$38,696. Well knowing and believing the foregoing facts, Jimmy A. Dunn, on or about April 15, 2005, in the Eastern District of Tennessee, did willfully attempt to evade and defeat the income tax due and owing by him to the United States of America for the calendar year by failing to make an income tax return on or before April 15, 2005, as required by law, to any proper officer of the Internal Revenue Service, by concealing and attempting to conceal from all proper officers of the United States of America his true and correct income. For tax year 2004, Jimmy A. Dunn's willful tax evasion resulted in a tax loss to the United States in the amount of \$38,696.

l) During the calendar 2005, Jimmy A. Dunn, a resident of Knoxville, Tennessee, had and received taxable income in the sum of \$175,195. Upon that taxable income, there was owing to the United States of America an income tax of \$49,606. Well knowing and believing the foregoing facts, Jimmy A. Dunn, on or about April 17, 2006, in the Eastern District of Tennessee, did willfully attempt to evade and defeat the income tax due and owing by him to the United States of America for the calendar year by failing to make an income tax return on or before April 17, 2006, as required by law, to any proper officer of the Internal Revenue Service, by concealing and attempting to conceal from all proper officers of the United States of America his true and correct

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income. For tax year 2005, Jimmy A. Dunn's willful tax evasion resulted in a tax loss to the United States in the amount of \$49,606.

m) During the calendar 2006, Jimmy A. Dunn, a resident of Knoxville, Tennessee, had and received taxable income in the sum of \$80,592. Upon that taxable income, there was owing to the United States of America an income tax of \$29,360. Well knowing and believing the foregoing facts, Jimmy A. Dunn, on or about April 16, 2007, in the Eastern District of Tennessee, did willfully attempt to evade and defeat the income tax due and owing by him to the United States of America for the calendar year by failing to make an income tax return on or before April 16, 2007, as required by law, to any proper officer of the Internal Revenue Service, by concealing and attempting to conceal from all proper officers of the United States of America his true and correct income. For tax year 2005, Jimmy A. Dunn's willful tax evasion resulted in a tax loss to the United States in the amount of \$29,360.

n) For the purpose of calculating tax loss to the United States pursuant to U.S.S.G. §§ 1B1.3 and 2T1.1, the parties agree that the total tax loss attributable to Dunn's offense of conviction including the aggregate tax loss for the tax years 2001 (\$15,409), 2002 (\$61,816), 2003 (\$53,333), 2004 (\$38,696), 2005 (\$49,606), and 2006 (\$29,360) is \$248,220.

o) The parties agree that U.S.S.G. §§ 2T1.1(b)(1) and 2T1.1(b)(2) do not apply in this case.

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5. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

- a) the right to plead not guilty;
- b) the right to a speedy and public trial by jury;
- c) the right to assistance of counsel at trial;
- d) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;
- e) the right to confront and cross-examine witnesses against the defendant;
- f) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and
- g) the right not to testify and to have that choice not used against the defendant.

6. The defendant further agrees to cooperate completely and truthfully with any and all law enforcement agents and personnel of the United States Attorney's Office. This cooperation includes, but is not limited to, meeting with and being interviewed by such law enforcement agents or personnel of the United States Attorney's Office whenever requested. The defendant further agrees not to protect anyone who was truly involved and not to falsely implicate anyone who was not truly involved in the commission of criminal offenses. The defendant further agrees to testify completely and truthfully before a federal grand jury, at any trial, or at any other proceeding if called upon by the United States to do so. Upon request by the United States, the defendant must furnish all documents, objects and other evidence in the defendant's possession, custody or control that are relevant to the United State's inquiries. The defendant and defense counsel also knowingly, voluntarily, and intentionally waive the defendant's right (where applicable) to have defense counsel present during the course of cooperation, including questioning or court appearances.

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7. To ensure the defendant's truthful cooperation, the United States agrees, except as provided below, not to use any self-incriminating information provided by the defendant pursuant to this written plea agreement against the defendant. However, nothing in this plea agreement shall be applied to restrict the use of any information, (1) known to the United States prior to entering into this written plea agreement; (2) obtained from any other source; or (3) concerning the defendant's prior criminal record. Should any of the following occur (1) the defendant provides false or materially misleading information during the course of the defendant's cooperation; (2) the defendant later moves to withdraw the defendant's guilty plea or (3) the defendant breaches any of the terms of this plea agreement, then the United States may make use of any information provided by the defendant for any purpose in any subsequent proceeding, including grand jury, trial and sentencing phases of this case or in any other prosecutions or proceedings against the defendant.

8. At the time of sentencing, the United States may bring to the Court's attention the nature, extent, and value of the defendant's cooperation so that it may be considered in determining a fair and appropriate sentence under the facts of the case.

9. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, the United States agrees to move, at or before the time of sentencing, that the Court decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make statements that are inconsistent with accepting responsibility for the defendant's offense, including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make

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such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

10. The defendant agrees to pay the special assessment in this case prior to sentencing.

11. No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding the potential sentence in this case are not binding on the Court. The defendant understands that the sentence in this case will be determined by the Court after it receives the pre-sentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

12. This agreement does not resolve the Defendant's civil tax liability for any years and does not bind the Internal Revenue Service in any way regarding its efforts to examine or collect the defendant's civil tax liabilities. The defendant agrees that the defendant will cooperate fully with the Internal Revenue Service in determining the defendant's personal tax liabilities (civil or criminal) for the calendar years 2001 through 2006, and in paying all appropriate tax liabilities, penalties and interest.

13. The defendant also agrees to pay restitution to the Internal Revenue Service pursuant to 18 U.S.C. § 3663(a)(3). The defendant further agrees that, pursuant to 18 U.S.C. § 3663(a)(3) and this agreement, the Court will order as restitution the amount of taxes due and

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owing by the defendant to the Internal Revenue Service. The defendant agrees that the amount due as restitution to the Internal Revenue Service is \$248,220, as specified in the revenue agent's report dated January 30, 2009, which was signed by defendant on February 27, 2009, and which will be applied to the Defendant's civil tax liability for the years 2001 through 2006.

14. The defendant agrees to pay any fine and/or restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the United States deems appropriate. Finally, the defendant and counsel agree that the defendant may be contacted regarding the collection of any fine and/or restitution without notifying counsel and outside the presence of counsel. Defendant also agrees to send a notice of any payments made pursuant to this agreement to the IRS at the following address: Internal Revenue Service, Attn: MPU, STOP 151 (Restitution), P.O. Box 47-421, Doraville, GA 30362.

15. (a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offense committed, the defendant agrees not to file a direct appeal of the defendant's conviction or sentence except the defendant retains the right to appeal a sentence imposed above the sentencing guideline range as determined by the district court.

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(b) In addition, the defendant knowingly and voluntarily waives the right to file any motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the defendant's conviction(s) and/or resulting sentence. The parties agree that the defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective assistance of counsel or prosecutorial misconduct not known to the defendant by the time of the entry of judgment.

16. This agreement becomes effective once it is signed by the parties. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement, moves to withdraw the defendant's guilty plea(s), or violates any court order or any local, state or federal law pending the resolution of this case, then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea in this case.

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17. This plea agreement constitutes the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charge, and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

So agreed.

3/30/2009
Date

3-27-09
Date

3-27-09
Date

James R. Dedrick
United States Attorney

By: F. M. Hamilton III
F. M. Hamilton III
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Jimmy A. Dunn
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