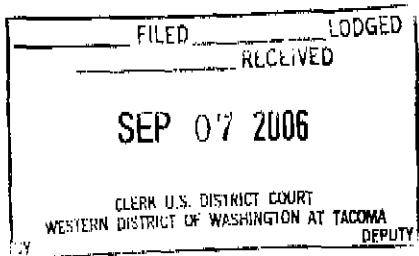


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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GUY V. FLAKE,

Defendant.

NO. CR06-5232FDB

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Janet Freeman, Assistant United States Attorney for said District, and the defendant, GUY V. FLAKE, and his attorney, Michael S. Clark, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to Tax Evasion, as charged in Count 1 of the Indictment, in violation of Title 26, United States Code, Section 7201. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering his plea of guilty, he will be placed under oath. Any statement given by him under oath may be used by the United States in a prosecution for perjury or false statement.

1           2.     Elements of the Offense. The elements of the offense of Tax Evasion, as  
2 charged in Count 1 of the Indictment, in violation of Title 26, United States Code, Section  
3 7201, are as follows:

4           *First, the Defendant attempted to evade or defeat the assessment of his federal*  
5 *income tax for calendar year 1999 by filing a false tax return;*

6           *Second, there was an additional tax due and owing for that year;*

7           *Third, the Defendant acted willfully, with the specific intent to violate the law.*

8           3.     The Penalties. Defendant understands that the statutory penalties for the  
9 offense of Tax Evasion, as charged in Count 1 of the Indictment, in violation of Title 26,  
10 United States Code, Section 7201, are as follows: imprisonment for up to five (5) years, a  
11 fine of up to Two Hundred Fifty Thousand Dollars (\$250,000), a period of supervision  
12 following release from prison of between two (2) years and three (3) years, and a One  
13 Hundred Dollar (\$100) penalty assessment. If Defendant receives a sentence of probation,  
14 the probationary period could be up to five (5) years. Defendant agrees that the penalty  
15 assessment shall be paid at or before the time of sentencing.

16           Defendant agrees that any monetary penalty the Court imposes, including the  
17 special assessment, fine, costs or restitution, is due and payable immediately, and further  
18 agrees to submit a completed Financial Statement of Debtor form as requested by the  
19 United States Attorney's Office.

20           Defendant understands that supervised release is a period of time following  
21 imprisonment during which he will be subject to certain restrictions and requirements.  
22 Defendant further understands that if supervised release is imposed and he violates one or  
23 more of its conditions, he could be returned to prison for all or part of the term of  
24 supervised release that was originally imposed. This could result in Defendant serving a  
25 total term of imprisonment greater than the statutory maximum stated above.

26           4.     Rights Waived by Pleading Guilty. Defendant understands that, by pleading  
27 guilty, he knowingly and voluntarily waives the following rights:

28           a.     The right to plead not guilty, and to persist in a plea of not guilty;

1 b. The right to a speedy and public trial before a jury of twelve persons;

2 c. The right to the effective assistance of counsel at trial, including, if

3 Defendant could not afford an attorney, the right to have the Court appoint one for him;

4 d. The right to be presumed innocent until guilt has been established at  
5 trial, beyond a reasonable doubt;

6 e. The right to confront and cross-examine witnesses against him at  
7 trial;

8 f. The right to compel or subpoena witnesses to appear on the  
9 Defendant's behalf at trial;

10 g. The right to testify or to remain silent at trial, at which trial such  
11 silence could not be used against Defendant; and

12 h. The right to appeal a finding of guilt or any pretrial rulings.

13 5. United States Sentencing Guidelines. Defendant understands and  
14 acknowledges that, at sentencing, the Court must consider the sentencing range calculated  
15 under the United States Sentencing Guidelines, together with the other factors set forth in  
16 Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances  
17 of the offense; (2) the history and characteristics of the defendant; (3) the need for the  
18 sentence to reflect the seriousness of the offense, to promote respect for the law, and to  
19 provide just punishment for the offense; (4) the need for the sentence to afford adequate  
20 deterrence to criminal conduct; (5) the need for the sentence to protect the public from  
21 further crimes of the defendant; (6) the need to provide the defendant with educational and  
22 vocational training, medical care, or other correctional treatment in the most effective  
23 manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims;  
24 and (9) the need to avoid unwarranted sentence disparity among defendants involved in  
25 similar conduct who have similar records. Accordingly, Defendant understands and  
26 acknowledges that:

27 a. The Court will determine Defendant's applicable Sentencing  
28 Guidelines range at the time of sentencing;

1           b.     After consideration of the Sentencing Guidelines and the other factors  
2 in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the  
3 maximum term authorized by law;

4           c.     The Court is not bound by any recommendation regarding the  
5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
6 range offered by the parties, or by the United States Probation Department; and

7           d.     Defendant may not withdraw a guilty plea solely because of the  
8 sentence imposed by the Court.

9           6.     Ultimate Sentence. Defendant acknowledges that no one has promised or  
10 guaranteed what sentence the Court will impose.

11          7.     Tax Loss Amounts. The parties stipulate and agree that the amount of "tax  
12 loss" which the Court should use as "relevant conduct" for criminal sentencing purposes  
13 under §2T1.1, U.S.S.G., was at least \$142,020. This figure consists of tax losses resulting  
14 from the Defendant's conduct as charged in Count 1 (1999 Form 1040), as well as all  
15 conduct related to his 1998 income taxes.

16          The United States reserves the right to advocate to the Probation Office and to the  
17 Court any additional tax due and owing, as relevant conduct, that it believes applies to  
18 income taxes for calendar year 2000, as charged in Count 2 of the Indictment. The  
19 defendant reserves the right to advocate to the Probation Office and to the Court the  
20 amount of tax loss, if any, that he believes applies to income taxes for calendar year 2000.

21          The parties understand and agree that the Court will determine the total amount of  
22 tax loss for purposes of relevant conduct and sentencing.

23          The Defendant agrees and stipulates that the tax loss figures are computed for  
24 criminal sentencing purposes only, and *does not* preclude the Internal Revenue Service  
25 from examining, assessing, and/or collecting any additional civil tax, penalties, and/or  
26 interest that may be owing for the tax years 1998, 1999, and 2000. In addition, Defendant  
27 understands that he is required to pay the costs of a criminal prosecution.

1 8. Statement of Facts. The parties agree on the following facts in support of  
 2 Defendant's guilty plea and sentencing. The Defendant admits he is guilty of the charged  
 3 offenses.

4 a. During all relevant times, GUY V. FLAKE <sup>Legal Residence was</sup> resided in Sumner, within the  
 5 Western District of Washington, ~~where he derived most of his income and~~  
 6 where he prepared his federal income tax returns, ~~and where some affirmative~~  
 7 ~~acts of tax evasion were committed.~~

8 b. During the calendar years 1998, 1999, and 2000, FLAKE was a general  
 9 contractor who installed and maintained mailboxes for the United States  
 10 Postal Service. During this period, the Postal Service wrote checks to the  
 11 Defendant for his services in the amount of at least \$2,126,843.23, as  
 12 follows: \$531,303.53 in 1998; \$1,034,733.18 in 1999; and \$560,806.52 in  
 13 2000. The defendant specifically reserves the right to show that his  
 14 reportable gross receipts for calendar year 2000 were approximately  
 15 \$187,000 less. The Government reserves the right to prove that FLAKE'S  
 16 reportable receipts for calendar year 2000 were approximately \$560,806.52.

17 c. The Defendant failed to file an income tax return for 1998, which meant he  
 18 failed to report any of the income paid to him by the Postal Service. For  
 19 calendar year 1998, FLAKE evaded his income taxes in the approximate  
 20 amount of \$17,992.

21 d. FLAKE filed income tax returns for 1999 and 2000. He signed both returns  
 22 under the penalty of perjury. He filed the 1999 tax return untimely, on or  
 23 about March 9, 2001.

24 e. The 1999 and 2000 income tax returns were false because FLAKE  
 25 reported some, but not all, of the moneys he earned from the Postal  
 26 Service. Specifically, he underreported his Gross Receipts on each  
 27 return. For example, on his 1999 tax return, FLAKE reported only  
 28 \$573,388 of the gross receipts that he received from the Postal  
 Service, but he failed to report additional receipts in the amount of  
 \$461,345.18. On his 2000 tax return, FLAKE reported only \$330,656  
 of the gross receipts paid by the Postal Service during the year; the  
 parties agree that he failed to report additional receipts of at least  
 \$43,150. However, the Government reserves the right to prove that  
 FLAKE failed to report on his 2000 income tax return additional  
 receipts from the Postal Service in an amount up to \$230,150.52.

f. By not reporting the actual amount of gross receipts, FLAKE misrepresented  
 to the IRS his correct amount of income for each year. Consequently, for  
 calendar year 1999, he reduced his taxable income and evaded his income  
 taxes by approximately \$124,028; that is, he had an additional tax due of  
 approximately \$124,028. For criminal sentencing purposes, the amount of  
 tax loss resulting from the defendant's conduct for calendar years 1998 and  
 1999 was \$142,020. As stated in paragraph 7, each party reserves the right  
 to advocate the amount of tax loss, if any, for calendar year 2000.

g. By not reporting all of the income that he received from the Postal Service,  
 FLAKE acted willfully, with the specific intent to evade the assessment of  
 the proper amount of taxes owed by him; that is, he knew he had an  
 obligation to report all income received by him, and he intentionally violated  
 that duty by not reporting all of his income and the correct amount of tax.

1           9.     Additional Sentencing Facts. The parties acknowledge and agree that each  
2 party may present additional facts to the Probation Office during the Presentence  
3 Investigation and to the Court at sentencing for consideration by the Court in determining  
4 the nature and extent of the offense, and other factors listed in paragraph 6, *above*, and in  
5 determining the appropriate sentence for the defendant.

6           10.    Low End Sentence Recommendation. As long as the Defendant does not  
7 engage in conduct, as provided in paragraph 14, below, the United States will not oppose a  
8 sentence recommendation at the low end of the applicable guidelines sentencing range.

9           11.    Non-Prosecution of Additional Offenses. As part of this Plea Agreement,  
10 the United States Attorney's Office for the Western District of Washington agrees to  
11 dismiss Count 2 of the Indictment and not prosecute Defendant for any additional offenses  
12 known to it as of the time of this Agreement that are based upon evidence in its possession  
13 at this time, or that arise out of the conduct giving rise to this investigation. In this regard,  
14 Defendant recognizes that the United States has agreed not to prosecute all of the criminal  
15 charges that the evidence establishes were committed by him solely because of the  
16 promises made by him in this Agreement. Defendant acknowledges and agrees, however,  
17 that for purposes of preparing the Presentence Report, the United States Attorney's Office  
18 will provide the United States Probation Office with evidence of all relevant conduct  
19 committed by him.

20                     Defendant agrees that any charges to be dismissed before or at the time of  
21 sentencing were substantially justified in light of the evidence available to the United  
22 States, were not vexatious, frivolous or taken in bad faith, and do not provide him with a  
23 basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119 (1997).

24           12.    Acceptance of Responsibility. The United States acknowledges that  
25 Defendant has assisted the United States by timely entering a guilty plea no later than  
26 September 7, 2006, thereby permitting the United States to avoid preparing for trial and  
27 permitting the Court to allocate its resources efficiently. If at the time of sentencing, the  
28 United States is satisfied that the Defendant has accepted responsibility, then it will

1 recommend a sentence that takes this acceptance of responsibility into consideration.

2 Defendant understands and agrees that the United States will base its recommendation on  
3 factors set forth in the United States Sentencing Guidelines, including Section 3E1.1.

4 13. Voluntariness of Plea. Defendant acknowledges that he has entered into this  
5 Plea Agreement freely and voluntarily, and that no threats or promises, other than the  
6 promises contained in this Plea Agreement, were made to induce him to plead guilty.

7 14. Post-Plea Conduct. Defendant understands that the terms of this Plea  
8 Agreement apply only to conduct that occurred prior to the execution of this Agreement.  
9 If, after the date of this Agreement, Defendant should engage in illegal conduct, or  
10 conduct that is in violation of his conditions of release (examples of which include, but are  
11 not limited to: obstruction of justice, failure to appear for a court proceeding, criminal  
12 conduct while pending sentencing, and false statements to law enforcement agents, the  
13 Pretrial Services Officer, Probation Officer or Court), the United States is free under this  
14 Agreement to seek a sentence that takes such conduct into consideration. Such a sentence  
15 could include a sentencing enhancement under the United States Sentencing Guidelines or  
16 an upward departure from the applicable sentencing guidelines range.

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