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January 22, 2008

Honorable Paul Zoss
United States Magistrate Judge
Sioux City, Iowa 52401

Re: United States v. Thomas Ray Dillavou, No. CR 07-3022MWB

Dear Judge Scoles:

I am writing in regard to the Rule 11 hearing in the above entitled matter which is presently scheduled to be held at 4 p.m., on January 24, 2008.

The defendant, Thomas Ray Dillavou, has agreed to enter a plea to Counts 1 and 4 of the five-count Indictment in Criminal Number CR07-3022MWB. Counts 1 and 4 charge Dillavou with making or subscribing a false tax return, in violation of Title 26, United States Code, Sections 7206(1). Counts 2, 3 and 5 will be dismissed at sentencing.

STATUTE

Title 26, United States Code, Sections 7206(1) provides in pertinent part:

Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to ever material matter [shall be guilty of a felony offense].

ELEMENTS OF THE OFFENSE

The elements of this false tax return charge as charged in Counts 1 and 4 are as follows:

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One, the defendant made and signed a Form 1040 U.S. Individual Income Tax Return;

Two, the return contained a written declaration that it was signed under the penalties of perjury;

Three, the defendant did not believe the return to be true and correct as to total income;

Four, the defendant acted willfully; and

Five, the false matter in the personal income tax return was material.

MAXIMUM PENALTIES

The defendant understands that Counts 1 and 4 are each punishable by the following maximum penalties: up to three years imprisonment without the possibility of parole; a fine of up to \$250,000; a mandatory special assessment of \$100; a term of supervised release of up to 3 years and restitution to the Internal Revenue Service.

FACTUAL BASIS FOR THE PLEA

A factual basis for the plea, as stipulated to in the plea agreement, is set forth below:

Plastic Injection Molders, Inc. ("PIM") is a plastic molding company owned 50% each by Thomas Dillavou and Gregory Knopf. PIM has been in operation since 1986. In 1993, the defendant entered into an Offer in Compromise agreement with the Internal Revenue Service ("IRS"), on behalf of PIM, pursuant to which PIM agreed to pay delinquent employment taxes over a five year period. During the years 1997 through 2000, the defendant diverted approximately \$598,172 of corporate profits from PIM and spent the money in a variety of ways, including; a personal investment scheme overseas; paying for repairs and remodeling for his personal residence; making payments for personal loans and paying for vacation expenses, among other things. While approximately \$598,172 was diverted from PIM, the government agrees to deduct \$50,000 from this figure for tax loss purposes because defendant had permission from the co-owner, Gregory Knopf, to make a payment or payments of up to \$50,000 in connection with an overseas investment scheme. (The parties understand that the defendant may seek to introduce evidence to establish that the authorized payment or payments by Knopf was as much as \$100,000).

After the initial agreement, in approximately 1998, Knopf told Dillavou to cease investing corporate funds in the scheme, but the defendant continued to take cash from the corporate account and send the money overseas and pay for other personal expenses without Knopf's knowledge or permission. The money taken from the

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corporate account and used by defendant constituted taxable income to defendant. The defendant willfully failed to report these funds as gross income in the personal income tax returns Dillavou signed and filed in 2002 and 2003 for tax years 1997, 1998, 1999 and 2000.

Pursuant to this scheme, the defendant withdrew cash from the PIM corporate bank account on a regular basis from 1997 through most of 2000. Defendant then sent this money by wire transfer overseas and used PIM funds to pay other personal expenses. These personal expenses paid using PIM funds included the payment of some vacation expenses including time share fees, the purchase of jewelry, payments of personal loans, pet supplies, and the payment of expenses for repair and remodeling of his personal residence.

PLEA AGREEMENT

A copy of the signed plea agreement is separately provided to the court.

I hope this information will be helpful to the Court for the plea taking.

Sincerely,

MATT M. DUMMERMUTH
United States Attorney

By: 

KANDICE A. WILCOX
Assistant United States Attorney

cc: R. Scott Rhinehart, Esq.