UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
at COVINGTON

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA **PLAINTIFF**

V.

RONALD E. WEINLAND **DEFENDANT**

SENTENCING MEMORANDUM

Defendant Ronald E. Weinland, through undersigned counsel, submits this memorandum concerning the advisory sentencing guidelines calculation for his sentencing on November 14, 2012.[1]

I. DETERMINING WHICH VERSION OF THE GUIDELINES APPLY.

At the outset, the Court must determine which version of the guidelines to apply. Mr. Weinland does not object to the Court's use of the November 1, 2011 version. The following Parts address relevant portions of those guidelines.

II. DETERMINING THE CHAPTER TWO OFFENSE LEVEL.[2]

The 2011 Statutory Appendix specifies U.S.S.G. § 2T1.1 as the Chapter Two guideline for 26 U.S.C. § 7201. Section 2T1.1(a)(1) provides that the base offense level for a tax evasion offense is the offense level listed in the tax table under Section 2T4.1 for the corresponding amount of "tax loss" attributable to the offense. U.S.S.G. § 2T1.1(a)(1). Section 2T1.1(c)(1) defines tax loss as "the total amount of the loss that was the object of the offense (*i.e.*, the loss

[1] With this memorandum, Mr. Weinland is submitting a motion for variance and supporting memorandum.

[2] This discussion of the appropriate Chapter Two advisory offense level addresses Objections One, Four, Seven, Eight, Eleven, Fourteen and Fifteen in Mr. Weinland's written objections, dated October 9, 2012 (the "Defendant's PSR Objections"), objecting to ¶¶ 1,8, 11, 12, 15, and 20 of the Presentence Investigation Report prepared September 25, 2012 ("PSR"), and the Probation Officer's response to Objections Eleven, Fourteen and Fifteen of the Defendant's PSR Objections in her addendum to the PSR prepared October 19, 2012 ("PSR Addendum").

that would have resulted had the offense been successfully completed)." U.S.S.G. § 2T1.1(c)(1). Where the offense involves unreported gross income, Section 2T1.1(c)(1) states that the tax loss should equal 28% of the unreported gross income "unless a more accurate determination of the tax loss can be made." *Id.* Note (A). For the purposes of Section 2T1.1, gross income "has the same meaning as it has in 26 U.S.C. § 61 and 26 C.F.R. § 1.61." U.S.S.G. § 2T1.1, App. Note 6.

Section 2T1.1(b)(2) requires a two level increase in offense level where the offense involved "sophisticated means." U.S.S.G. § 2T1.1(b)(2). "Sophisticated Means" has been described as "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G. § 2T1.1, App. Note 4. Thus, offense conduct that includes "hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means." *Id.*

A. Tax Loss.[3]

Generally, the government's baseline amount for calculating unreported income in a given year in this matter was the total funds that it determined were transferred from church accounts into personal accounts during that year. The government then reduced the total transfer amount to account for transactions that the government determined to be for legitimate purposes such as the payment of salary or for the reimbursement of other legitimate church expenses. Thus, any amount that was transferred into a personal account that the government determined was not explained or offset by a legitimate church purpose or expense, was essentially deemed unreported income to Mr. Weinland. As a result, the government's approach basically operated

[3] This discussion of the tax loss amount focuses on two significant potential adjustments to unreported income that could impact the calculation of the advisory sentencing guidelines range. Mr. Weinland believes that there are other errors in the government's calculation of tax loss and reserves the right to address those issues at sentencing or in a subsequent civil audit.

under the assumption that any transfer from a church account to a personal account constituted gross income to Mr. Weinland. Such an assumption is not supported under the law.

As stated above, for purposes of determining gross income under Section 2T1.1, gross income still has the "same meaning as it has in 26 U.S.C. § 61…." U.S.S.G. § 2T1.1, App. Note 6. And in determining gross income, it is "well settled that the mere receipt and possession of money does not by itself constitute taxable income." *Lashells' Estate v. Commissioner*, 208 F.2d 430, 435 (6th Cir. 1953). For example, where a taxpayer can demonstrate that he has received funds in his capacity as a trustee or agent, the taxpayer's receipt of the money is not deemed gross income. *Id.* Further, where an employer pays the travel expense of an employee's spouse or dependent, the expenses are generally excluded from the employee's gross income if they qualify as a working condition fringe benefit under IRC § 132(a)(3). *See* 26 C.F.R. § 1.132-5(t). Both of these "exclusions" from gross income are analyzed in more detail below.

1. Funds Held In The Foreign Account.

Any funds or property that a taxpayer holds in trust for another are not included in the taxpayer's gross income (*i.e.*, 26 U.S.C. § 61). *See* 26 U.S.C. § 671. This is true even where, as a result of the taxpayer's role as trustee, the taxpayer has dominion and control over the trust assets. *Id.* Accordingly, if Mr. Weinland held or received money or property in trust for the church, such amounts should not be included in Mr. Weinland's gross income.

Additionally, funds or property that a taxpayer holds or receives as an agent on behalf of a principal are not income to the agent taxpayer. *See Lashells' Estate*, 208 F.2d at 435. Therefore, if Mr. Weinland held or received any funds or property as an agent of the church, such amounts should not be included in Mr. Weinland's gross income.

The nature of Mr. Weinland's interest in any funds or property at issue (*i.e.*, whether he served as a trustee or as an agent), is determined under Kentucky law. *See Spotts v. United States*, 429 F.3d 248, 251 (6th Cir. 2005) ("[I]n application of a federal revenue act, state law controls in determining the nature of the legal interest which the taxpayer had in the property.") (quoting *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 722 (1985)). With respect to whether Mr. Weinland acted as a trustee on behalf of the church, Kentucky law permits an oral trust agreement. *See Hale v. Hale*, 313 Ky. 344, 353, 231 S.W.2d 2, 7 (Ky. 1950) ("no particular language nor technical words are necessary to create a trust . . . trusts in personal property can be created by parol and sustained by parol evidence.") Four elements are required to create an oral trust under Kentucky law: (1) an intent to create a trust; (2) an ascertainable property or *res* to be held in trust; (3) a sufficiently certain beneficiary of the trust; and (4) a trustee who holds and administers the *res* for the benefit of the beneficiary. *Acuity, a Mut. Ins. Co. v. Planters Bank, Inc.*, 362 F.Supp.2d 885, 892 (W.D.Ky. 2005).

In contrast to the establishment of an oral trust, under Kentucky law, an agency relationship results from the manifestation of consent by one person, the principal (*e.g.*, the Church) to another, the agent (*e.g.*, Mr. Weinland) that the agent shall act on behalf of the principal and subject to his control, and consent by the agent so to act. *See McAlister v. Whitford*, 365 S.W.2d 317, 319 (Ky. 1962). No formal or written contract is required to create an agency relationship. *Terbovitz v. Fiscal Court of Adair County*, 825 F.2d 111, 116 (6th Cir. 1987).

Here, it is undisputed that Mr. Weinland transferred approximately $290,000 of church funds in 2007 through his personal account into certain foreign accounts with a foreign financial institution in Switzerland. It is also undisputed that Mr. Weinland established the foreign

accounts in 2003 shortly after Mr. Weinland delivered a sermon to church members in late 2002 informing them that, consistent with their beliefs, he was going to open an account in Switzerland in his personal name using approximately $200,000 of church funds. After opening the account, Mr. Weinland traveled to Switzerland with a COG-PKG representative so that the representative could be added as a power of attorney on the account. In late 2008 and early 2009, all of the funds in the foreign accounts were transferred from the foreign accounts back to church accounts in the United States.

It is clear that these funds remained church funds while on deposit in the foreign accounts and the funds were eventually returned to the church accounts. There was no attempt by Mr. Weinland to hide from church members the existence of the foreign accounts, the transfer of church funds to the foreign accounts, the reasons for the transfers to the foreign accounts, or the fact that the foreign accounts were opened in his personal name. Consequently, either of the legal theories discussed herein (i.e., funds held in trust or agency) should operate to exclude any amounts that Mr. Weinland transferred from church accounts in 2007 for deposit into the foreign accounts. As a result, the approximately $290,000 in transfers to the foreign accounts in 2007 should have been excluded from the government's determination of unreported income.

2. Working Condition Fringe Benefit.

As we discussed in detail in our objections to the PSR, in calculating its revised unreported income amounts, the government failed to give Mr. Weinland credit for amounts related to Laura Weinland's airfare and travel expenses that should have been excluded from Mr. Weinland's gross income as a working condition fringe benefit under 26 U.S.C. § 132(a)(3). Generally, when an employer pays the travel expense of an employee's spouse or dependent, the expenses are excluded from the employee's gross income if they qualify as a working condition

fringe benefit under IRC § 132(a)(3). *See* 26 C.F.R. § 1.132-5(t). This exclusion from gross income applies even where, as was the case here, the spouse's or the dependent's travel expenses are not deductible by the employer under IRC § 274(m)(3) because the spouse or dependent was not an employee of the subject employer.

Recognizing the potential hardship of IRC § 274(m)(3) to employees as it relates to otherwise legitimate spousal or dependent travel expenses where the spouse or dependent does not satisfy the tests under IRC § 274(m)(3) (i.e., the spouse or dependent is not an employee of the subject employer), the IRS promulgated 26 C.F.R. § 1.132-5(t), which permits the taxpayer to potentially qualify the spousal or dependent travel expenses as a "working condition fringe benefit" that is excluded from the taxpayer's gross income under IRC § 132(a)(3). This means that the taxpayer's employer is still precluded from deducting the spousal or dependent travel expense as an ordinary and necessary business expense because of the limitation discussed above under IRC § 274(m)(3). But, if the expense qualifies as a working condition fringe benefit, **the taxpayer does not have to include the travel in gross income because it is excluded from income under IRC § 132(a)(3)**.

This exclusion does not require the employer to have a formal fringe benefit plan or program. All that is required to qualify for exclusion as a working condition fringe benefit is that "it can be adequately shown that the spouse's [or] dependent's…presence on the employee's business trip **has a bona fide business purpose** and…the employee substantiates the travel within the meaning of paragraph (c) of this section." 26 C.F.R § 1.132-5(t)(1) (emphasis added).

At trial, Mr. Weinland and other church members testified as to the vital role that Mrs. Weinland's played in the church and to Mr. Weinland's ministry. It is undisputed that most of the Weinlands' airfare costs involved visiting and worshipping with church members and

congregations across the world. The testimony clearly supported a determination that Mrs. Weinland performed a bona fide business purpose on behalf of the COG-PKG when she traveled with Mr. Weinland to visit, counsel and worship with these members and congregations. The total airfare costs for Mrs. Weinland over the time periods covered by the indictment totaled approximately $95,000. As stated above, 26 C.F.R. § 1.132-5(t) makes it clear that the exclusion from gross income for working condition fringe benefits as it relates to spousal or dependent travel is not precluded by any limitations on deduction where the spouse or dependent is not an employee. Accordingly, 26 C.F.R. § 1.132-5(t) permits a situation where the employer can't deduct the travel of a non-employee spouse or dependent because of the limitation under 26 U.S.C. § 274(m)(3), yet, the taxpayer employee does not have to include the spousal travel as income because it is excluded from income as a working condition fringe under 26 U.S.C. § 132(a)(3). As a result, approximately $95,000 in airfare costs for Ms. Weinland should have been excluded from the government's determination of unreported income.

3. Sophisticated Means.

The conduct alleged by the government does not rise to the level of "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense" as is required under the Application Note to Section 2T1.1(b)(2). U.S.S.G. § 2T1.1, App. Note 4. At the heart of the conduct at issue was a very unsophisticated reimbursement process wherein Mr. and Mrs. Weinland reimbursed themselves with church funds for expenses that were incurred on personal credit cards. Although the government disagreed with how certain expenses were characterized (*i.e.*, church vs. personal), the evidence at trial supported a reimbursement process through which the Weinlands reimbursed themselves for substantial legitimate church expenses that they had incurred on their personal credit cards. For example,

the government's investigation determined that the Weinlands incurred legitimate church expenses on their personal credit cards totaling $2,979,417.57 (or, approximately 84% of the $3,567,236.35 in total credit card transactions) during the time period covered by the indictment.

Mr. Weinland did nothing to hide this reimbursement process or the related transfers. All transfers were made through accounts either held in the name of Mr. and Mrs. Weinland and the church. Most of the purchases at issue were made using credit cards held in the name of Mr. and Mrs. Weinland. The Weinlands kept a significant amount of expense receipts during the five-year period and created a significant paper trail that permitted the government to completely reconstruct five years of financial activity. There is no evidence that Mr. Weinland attempted to hide assets or transactions through the use of fictitious entities or other individuals or that he undertook any complex or complicated asset structuring or tax planning.

Although the relevant Application Note to Section 2T1.1 mentions an "offshore foreign account" as an indication of "sophisticated means," the Application Note contemplates the hiding of assets or transactions "through the use of…offshore financial accounts." U.S.S.G. § 2T1.1, App. Note 4. That is, the Application Note requires that the offshore account was used as part of a complex or intricate scheme to conceal certain assets and/or transactions, not just that an offshore account existed.

Here, as discussed above, Mr. Weinland discussed the decision to open the foreign account with church members during a sermon before the account was opened. In that sermon, Mr. Weinland stated that: (1) the account would be opened using approximately $200,000 of church funds; (2) the account would be in his personal name because of concerns related to the Swiss government's treatment of the church; and (3) the account was being opened consistent with their beliefs. After the account was opened, Mr. Weinland traveled to Switzerland with a

senior church representative so that the representative could be added to the account as a power of attorney. All of this conduct is completely inconsistent with the actions of someone that is trying to hide or conceal the existence of certain assets or transactions through the use of a foreign account.

B. Calculation of Offense Level.

The government's revised tax loss number is $245,176. Section 2T1.1 and Section 2T4.1 provide a base offense level of 18 for a tax loss amount that is more than $200,000, but less than $400,000. However, as discussed above, the government failed to exclude certain amounts from its determination of gross income. These exclusions from gross income consist of approximately $290,000 in church funds that Mr. Weinland transferred into the foreign accounts on behalf of the church and approximately $95,000 in airfare costs for Mrs. Weinland to visit and counsel with church members around the world. Together, these items total approximately $385,000. It is estimated that this reduction in gross income would reduce the tax loss by approximately $107,800 ($385,000 x 28%).

Under Section 2T1.1 and Section 2T4.1, a revised tax loss number of $137,376 provides a base offense level of 16 for a tax loss amount that is more than $80,000, but less than $200,000. The specific offense characteristic under Section 2T1.1(b)(1) that deals with unreported or incorrectly identified income from criminal activity does not apply here. As discussed above, Section 2T1.1(b)(2) provides a two level increase where the offense involved sophisticated means. In our view, this specific offense characteristic does not apply here.

If the Court finds that the tax loss is less than $200,000 and that the offense did not involve sophisticated means, the offense level is 16. If the Court finds that the tax loss is less than $200,000 and that the offense did involve sophisticated means, the offense level is 18. If

the Court finds that the tax loss is more than $200,000 and that the offense did involve sophisticated means, the offense level is 20.

III. DETERMINING THE TOTAL OFFENSE LEVEL AND ADVISORY SENTENCING RANGE.[4]

The presentence report proposes a two-level increase for obstruction under Section 3C1.1. Additionally, the government has proposed a two-level increase for aggravated role under Section 3B1.1(c) and a two-level increase for abuse of position of trust under Section 3B1.3. We maintain that none of these proposed adjustments are appropriate or supported by the evidence and address each proposed adjustment separately.

A. Section 3C1.1 – Obstruction

A two-level enhancement under Section 3C1.1 for obstruction of justice is imposed where it is determined that: "(1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense…." U.S.S.G § 3C1.1. The Application Notes to this section make it clear that Section 3C1.1 "is not intended to punish a defendant for the exercise of a constitutional right." *Id.*, App. Note 2. Moreover, the Sixth Circuit has recognized that "not every false statement made by a criminal defendant at trial necessarily qualifies as perjury." *United States v. Bazazpour*, 690 F.3d 796 (6th Cir. 2012) (citations omitted). As a result, in applying Section 3C1.1 to alleged false testimony by the defendant, "the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate

[4] This discussion of the total offense level and advisory sentencing range addresses Objections Thirteen, Sixteen, Seventeen, Nineteen, and Twenty of the Defendant's PSR Objections objecting to ¶¶ 17, 24, 28, 54, and 59 of the PSR, and the Probation Officer's response to those objections in the PSR Addendum. This discussion also addresses the objections that the government raised in its letter dated October 5, 2012.

testimony or statements necessarily reflect a willful attempt to obstruct justice." U.S.S.G § 3C1.1, App. Note 2. "Accordingly, the district court may not rely solely on the jury's verdict, but must instead make an independent finding that the defendant committed perjury." *United States v. Sassanelli*, 118 F.3d 495, 500 (6th Cir. 1997).

Additionally, the Section 3C1.1 enhancement only applies where a defendant "engages in obstructive conduct with knowledge that he or she is the subject of an investigation or with the correct belief that an investigation of the defendant is probably underway." *Bazazpour*, 690 F.3d 796. Thus, a defendant "who engages in obstructive conduct prior to the investigation, prosecution, or sentencing of the instant offense is not subject to the enhancement." *Id.* (citations omitted).

In determining what constitutes perjury, courts are to rely upon the definition of perjury set forth under the federal criminal perjury statute, 18 U.S.C. § 1621. *Id.* (quoting *United States v. Dunnigan*, 507 U.S. 87, 94 (1993). A witness violates the federal criminal perjury statute if he or she "gives false testimony concerning a **material matter** with the willful intent to provide false testimony, rather than as a result of confusion, mistake or faulty memory." *Id.* Where a defendant objects to an obstruction enhancement based on trial testimony, "a district court must review the evidence and make independent findings necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same, under the perjury definition [the court has] set out." *Sassanelli*, 118 F.3d at 500. When a district court conducts this analysis, the Sixth Circuit has stated that "it is preferable for [the] district court to address each element of the alleged perjury in a separate and clear finding." *Id.* at 500-01.

Under Supreme Court and Sixth Circuit precedent, a district court must satisfy the following two requirements when it seeks to enhance a sentence for obstruction of justice based

on a defendant's alleged perjury. *Id.* at 501. First, the court must identify "those particular portions of the defendant's testimony that it considers to be perjurious." *Id.* Second, the court "must either make specific findings for each element of perjury or at least make a finding 'that encompasses all of the factual predicates for a finding of perjury.'" *Id.*

Here, there is no evidence to support a determination that Mr. Weinland gave false testimony concerning a material matter with the willful intent to provide false testimony. The Probation Officer only identified general topics of concern in the PSR regarding Mr. Weinland's testimony (i.e., church and family financial matters). However, these general topics essentially covered all of Mr. Weinland's testimony. It is this lack of specificity that the courts have cautioned against in order to minimize the danger that the application of the guideline would discourage defendants from testifying truthfully at trial. *See Id.* at 500; *see also Bazazpour*, 690 F.3d 796. In the PSR Addendum, the Probation Officer failed to provide any additional specifics concerning Mr. Weinland's testimony and seems to base her determination as to the appropriateness of the enhancement solely on the jury's verdict, contrary to Sixth Circuit precedent. *See Sassanelli*, 118 F.3d at 500. Thus, the evidence does not support an obstruction adjustment.

B. Section 3B1.1(c) – Aggravated Role

Section 3B1.1(c) provides for a two-level enhancement "[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal activity." U.S.S.G. § 3B1.1(c). For the enhancement under Section 3B1.1(c) to be warranted, "a defendant must have exerted control over at least one individual within a criminal organization…." *United States v. Lalonde*, 509 F.3d 750, 765 (6th Cir. 2007) (quoting *United States v. Vandeberg*, 201 F.3d 805, 811 (6th Cir. 2000)). In arguing for the aggravated role enhancement under Section 3B1.1(c), the government

seems to be taking the position that the COG-PKG is a criminal organization. Such an allegation is unfortunate.

The evidence is clear that Mr. Weinland and his immediate family members have been actively involved in the administrative and ministerial functions and the daily operation of the church since its inception. Those roles have changed in many ways over the years as the church has grown. Further, at trial, church members testified concerning the "top down" or hierarchical form of church government used by COG-PKG to govern its ecclesiastical affairs. The church members testified that the church's chosen structure of government is based upon their individually held religious beliefs.

Yet, through its assertion that an aggravated role enhancement is warranted here, the government attempts to create an adverse inference as to Mr. Weinland's conduct based on a church operating and government structure that the church members believed was consistent with their faith. Such an adverse inference is unconstitutional under the First Amendment Free Exercise and Establishment Clauses. *See Watson v. Jones*, 80 U.S. 679, 728-29 (1872) ("the right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned.")

The evidence does not support a determination that Mr. Weinland was involved with or directed control over anyone within a criminal organization. As a result, the aggravated role enhancement under 3B1.1(c) is not applicable.

C. Section 3B1.3 – Abuse of Position of Trust

Section 3B1.3 provides for a two-level enhancement if "the defendant abused a position of public or private trust…in a manner that significantly facilitated the commission or concealment of the offense…." U.S.S.G. § 3B1.3. The Sixth Circuit has "constrained the circumstances under which the abuse-of-trust enhancement can apply." *United States v. May*, 568 F.3d 597, 603 (6th Cir. 2009). Further, the Sixth Circuit has held that the "abuse-of-trust enhancement may only be applied where the defendant abused a position of trust with the **victim** of his charged conduct." *Id.* (quoting *United States v. White*, 270 F.3d 356, 371 (6th Cir. 2001)) (emphasis added). "[T]he level of discretion accorded an [individual] is to be the decisive factor in determining whether his position was one that can be characterized as a trust position." *Id.* (quoting *United States v. Tribble*, 206 F.3d 634, 637 (6th Cir. 2000)).

As the government concedes, and Sixth Circuit precedent confirms, the victim in a tax evasion case is the IRS. *See May*, 568 F.3d at 603; *see also United States v. Edkins*, 2010 U.S. App. LEXIS 23878, **19 (6th Cir. 2010) (a copy of the decision is attached as **ANNEX A**). Thus, in analyzing whether the two-level enhancement under Section 3B1.3 should apply here, the question becomes whether Mr. Weinland "held a position of trust in relation to the government." *Id.* In *May*, the Sixth Circuit determined that the defendant had no discretion because the "law simply required May to collect the payroll taxes from his employees and transfer the funds to the IRS." *Id.* As a result, the court held that the defendant "was not in a position of trust relative to the IRS," and the two-level enhancement under Section 3B1.3 did not apply. *Id.* at 604. The Sixth Circuit also reached a similar conclusion in *Edkins*. *See Edkins*, 2010 U.S. App. LEXIS 23878, **19; *see also United States v. Guidry*, 199 F.3d 1150, 1159-60

(10th Cir. 1999) (finding in the context of a tax-evasion prosecution that the defendant did not occupy a position of trust vis-à-vis the government).

Like the defendants in the *May* and *Edkins* decisions, Mr. Weinland had no discretion regarding his obligations to the IRS. The law requires taxpayers to accurately report their income and pay their appropriate tax liability. The government is correct in that the federal government relies on all taxpayers, whether they are individuals, non-profits, corporations, or some other type of entity, to voluntarily report all required tax information to the IRS and collect and/or pay any tax liability. This reliance, however, does not equate to a position of trust. Accepting the government's position would mean that anyone that was convicted of tax evasion would be subject to the two-level enhancement under Section 3B1.3.

The evidence does not support a determination that Mr. Weinland held a position of trust relative to the IRS. Therefore, the abuse of position of trust enhancement under 3B1.1(c) is not applicable.

D. Calculation of the Total Offense Level and the Advisory Sentencing Range.

For the reasons stated herein and in our objections to the PSR, we maintain (a) that the evidence does not support an obstruction adjustment, (b) that no role adjustment is appropriate under Section 3B1.1(c), and (c) that no abuse of position of trust adjustment is appropriate under Section 3B1.3.

Depending on how the Court resolves these Chapter Three issues and the tax loss and specific offense characteristic issues, the potential lowest and highest offense levels and sentencing ranges for the tax evasion offenses are as follows:

Offense level 16 (tax loss less than $200,000, no specific offense characteristic, and no Chapter Three adjustments): Advisory sentencing range 21 to 27 months.

Offense level 26 (tax loss more than $200,000 but less than $400,000, sophisticated means specific offense characteristic, two-level obstruction adjustment, two-level aggravated role adjustment, and two-level abuse of position of trust adjustment): Advisory sentencing range 63 to 78 months.

Respectfully submitted,

/s/ J. Christopher Coffman
Robert C. Webb
J. Christopher Coffman
Frost Brown Todd LLC
400 W. Market Street, Floor 32
Louisville, KY 40202-3363
Phone: (502) 589-5400
Fax: (502) 581-1087
E-mail: bwebb@fbtlaw.com
ccoffman@fbtlaw.com
Counsel for Ronald E. Weinland

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2012, I electronically filed this document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to Robert K. McBride, Robert.McBride@usdoj.gov and Christopher L. Nasson, Chris.Nasson@usdoj.gov.

By: /s/ J. Christopher Coffman
J. CHRISTOPHER COFFMAN
Counsel for Ronald E. Weinland