



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

September 13, 2012

Mark Rotert, Esq.  
Stetler, Duffy & Rotert Ltd.  
Suite 2800  
10 S. La Salle Street  
Chicago, IL 60603

**Re: United States v. Donna Guerin, S3 09 Cr. 581 (WHP)**

Dear Mr. Rotert:

This prosecution and the protection against prosecution set forth below have been approved by the Tax Division, Department of Justice.

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Donna Guerin ("the defendant") to Counts One and Eight of the above-referenced Indictment, charging her with violations of Title 18, United States Code, Section 371 (Count One), and Title 26, United States Code, Section 7201 (Count Eight).

Count One charges the defendant based on her involvement, between in or about 1994 and 2005, in a conspiracy to defraud the United States, commit tax evasion, and engage in a wire fraud scheme, all in connection with the design, marketing, implementation, and defense of fraudulent tax shelters while acting as a partner of the Alzheimer & Gray law firm and a shareholder of the Jenkins & Gilchrist ("J&G") firm. Count Eight charges the defendant with tax evasion with respect to the tax liabilities of a client of J&G, who, during the 2000 tax year, engaged in a tax shelter transaction marketed and implemented by J&G and others. Count One carries a maximum sentence of 5 years' imprisonment, a maximum term of 3 years' supervised release, a maximum fine under 18 U.S.C. § 3571(d) of the greatest of \$250,000, or twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to the United States, and a mandatory \$100 special assessment. In addition, the Court must enter an order of restitution pursuant to Title 18, United States Code, Sections 3663, 3663A, and 3664, as a result of pecuniary losses to the United States, in the form of any unpaid taxes and interest, stemming from the conspiracy offense charged in Count One.

Count Eight carries a maximum sentence of 5 years' imprisonment, a maximum term of 3 years' supervised release, a maximum fine under 18 U.S.C. § 3571(d) of the greatest of \$250,000,

or twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to the United States, a mandatory \$100 special assessment, and costs of prosecution. The defendant also stipulates and agrees that, pursuant to Title 18, United States Code, Section 3663(a), the Court may impose an order of restitution as a result of pecuniary losses, if any, to the United States, in the form of any unpaid taxes and interest, stemming from the tax evasion offense charged in Count Eight.

The total maximum term of imprisonment on Counts One and Eight is 10 years.

The defendant admits the forfeiture allegation with respect to Count One of the Indictment and agrees to forfeit to the United States \$1,600,000, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), and 28 U.S.C. § 2461, which constitutes or is derived from proceeds traceable to the commission of the offense in Count One (the "Money Judgment").

The defendant agrees to make a good faith effort to sell her residence located at 500 South Kenilworth Avenue, Elmhurst, Illinois (the "Residence") prior to sentencing and to satisfy the Money Judgment at or before the date of sentencing, or within 10 days after closing on the sale of the Residence, if the defendant in good faith has been unable to sell the Residence prior to sentencing. If the defendant has been unable to sell the Residence within six months after the date of sentencing, the defendant agrees to forfeit the defendant's right, title and interest in the Residence to the United States, as property that constitutes or derives from proceeds traceable to the commission of the offense as alleged in Count One, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), and 28 U.S.C. § 2461. In such event, the Office agrees that any net sales proceeds from the sale of the Residence will be applied to the Money Judgment. Moreover, the parties agree that if the net sales proceeds of the Residence exceed \$1,200,000, the defendant agrees to forfeit 50% of any amount greater than \$1,200,000 to the United States (the "Additional Property"), in addition to the Money Judgment.

The defendant agrees that she will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Money Judgment, the Residence, and/or the Additional Property and will not cause or assist anyone else in doing so. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon her in addition to forfeiture. The defendant consents to the entry of the Consent Preliminary Order of Forfeiture annexed hereto as Exhibit A and agrees that the Consent Preliminary Order of Forfeiture shall be final as to the defendant at the time it is ordered by the Court. The Office agrees to request that the Department of Justice invoke its Restoration Policy and apply any forfeited funds to any restitution order arising from this case.

In consideration of the defendant's plea to the above offenses, she will not be further prosecuted criminally by this Office, and, with respect to tax offenses, the Tax Division, Department of Justice, for any crimes related in any way to (i) her participation in a conspiracy to defraud the United States, commit tax evasion, and commit wire and mail fraud, all in connection with the design, marketing, implementation, and defense of tax shelter transactions while acting as a partner

at the Altheimer & Gray law firm and a shareholder at the Jenkins & Gilchrist law firm, including substantive offenses stemming from the aforementioned conspiracy; (ii) the filing of a tax return for the tax year 2007 in which Donna Guerin sought a credit based on the claim of right doctrine; and (iii) any and all financial crimes related to her tenure at Altheimer & Gray and Jenkins & Gilchrist, and any economic or financial dealings with co-defendants and co-conspirators described in the Indictment. In addition, at the time of sentencing, the Government will move to dismiss with prejudice any open Counts against the defendant. This Agreement does not provide any protection against prosecution except as set forth above. The defendant agrees that with respect to any and all dismissed charges she is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

Counts One and Eight

1. U.S.S.G. §§ 2T1.9 and 2T1.1 applies to the offense charged in Count One of the Indictment. Pursuant to §§ 2T1.1(a)(1) and 2T4.1(P), the base offense level is 36 because the offense charged in Count One involved an aggregate tax loss of more than \$400,000,000.
2. A 2-level enhancement applies, pursuant to U.S.S.G. § 2T1.1(b)(2), because the defendant committed the offense using sophisticated means.
3. A 2-level enhancement applies, pursuant to U.S.S.G. § 2T1.9(b) because the conduct was intended to encourage persons other than or in addition to the defendant and her co-conspirators to violate the internal revenue laws and impede, impair, obstruct, and defeat the ascertainment, computation, assessment, and collection of revenue.

In accordance with the above, the applicable Guidelines offense level for Count One is 40.

Count Eight

4. U.S.S.G. § 2T1.1 applies to the offense charged in Count Eight of the Indictment. Pursuant to § 2T1.1(a)(1) Pursuant to §§ 2T1.1(a)(1) and 2T4.1(J), the base offense level is 24 because the offense charged in Count Eight involved a tax loss of more than \$2,500,000 and less than \$7,000,000.
5. A 2-level enhancement applies, pursuant to U.S.S.G. § 2T1.1(b)(2), because the defendant committed the offense using sophisticated means.

In accordance with the above, the applicable Guidelines offense level for Count Eight is 26.

#### Combined Offense Level

6. Pursuant to U.S.S.G. § 3D1.2(d), Counts One and Two are grouped together into a single Group because the offense level is determined largely on the total amount of loss. Pursuant to U.S.S.G. § 3D1.3(b), the offense level for that group is 40.

7. The parties agree that either party is free to argue for or against the applicability of a 3-level enhancement, pursuant to U.S.S.G. § 3B1.1(b), because the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants and was otherwise extensive.

8. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through her allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional one-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of her intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for retrial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable combined Guidelines offense level for Counts One and Eight is 40, should the Court determine that the 3-level enhancement pursuant to U.S.S.G. § 3B1.1(b) applies.

#### B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant does not have any criminal history points.

In accordance with the above, the defendant's Criminal History Category is I.

#### C. Sentencing Range

Based upon the calculations set forth above, and assuming that the Court finds that the 3-level enhancement pursuant to U.S.S.G. § 3B1.1(b) applies, the defendant's applicable Guidelines range is 292 to 365 months' imprisonment. Because the total statutory maximum on Counts One and Eight is 120 months, pursuant to U.S.S.G. § 5G1.1(d), the stipulated Guidelines range is 120 months (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 40, the applicable fine range is \$25,000 to \$250,000.

The parties agree that either party may seek a sentence lower than the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence lower than the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider a sentence lower than the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through her allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that her entry of guilty pleas to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw her pleas of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section

3582(c), of any sentence at or below the Stipulated Guidelines Range of 120 months' imprisonment and (ii) that the Government will not appeal any sentence at the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. In addition, the defendant agrees not to appeal any forfeiture amount that is less than or equal to \$1,600,000 and the Government agrees not to appeal any forfeiture amount that is greater than or equal to \$1,600,000. The defendant further agrees not to appeal any fine amount that is less than or equal to \$250,000, and the Government agrees not to appeal any fine amount that is greater than or equal to \$25,000.

The defendant hereby acknowledges that she has accepted this Agreement and decided to plead guilty because she is in fact guilty. By entering these pleas of guilty, the defendant waives any and all right to withdraw her pleas or to attack her convictions, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

It is further agreed that should the convictions following the defendant's pleas of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office and, to the extent set forth above, the Tax Division, Department of Justice.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

PREET BHARARA  
United States Attorney

By: Stanley J. Okula, Jr.  
Stanley J. Okula, Jr.  
Nanette L. Davis  
Jason P. Hernandez  
Assistant United States Attorneys  
(212) 637-1585/1117/1024

APPROVED:

Michael Bosworth  
Michael Bosworth  
Chief, Complex Frauds Unit

AGREED AND CONSENTED TO:

Donna M. Guerin  
Donna M. Guerin

9-13-2012  
DATE

APPROVED:

Mark J. Rotert  
Mark Rotert, Esq.  
Attorney for Donna Guerin

9-13-2012  
DATE