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March 19, 2013

VIA E-MAIL PUBAFFAIRS@USSC.GOV AND REGULAR MAIL

United States Sentencing Commission
Attention: Public Affairs
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

Re: Proposed Amendments to the Federal Sentencing Guidelines

To Whom It May Concern:

I am submitting on my own behalf, this short comment with respect to Proposed Amendments to commentary to U.S.S.G. §2T1.1 of the Sentencing Guidelines posted on January 18, 2013. I am aware of the Commission's hearing last week and the proposed amendment setting forth three options with respect to the tax guidelines. I wish to add the following:

1. Assume the following hypothetical: The taxpayer has always had an outside accountant prepare his entity and personal returns. The entity return is an S Corporation and therefore, any income net of expenses passes through to the taxpayer's personal return. The IRS investigation reveals unreported income and expenses which were not taken on the return. It turns out that the accountants simply made the same error in multiple years and failed to reduce the income as reported by appropriate expenses. As I understand option 2, the taxpayer would not be permitted an offset for any expenses not reflected on his S Corporation return solely due to the error of his accountants. I suggest that this would not be an appropriate result.

2. I have attached below a chart showing the average first time sentences for tax offenders based on the Commission's statistics from 2004 to 2011.

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| Year Ended September 30 | Prison | “Split” Sentence | Probation & Confinement | Probation Alone | Average Sentence for First-Time Offender/Median Length |
|----------------------------|--------|---------------------|----------------------------|--------------------|--|
| 2004 | 43.3% | 08.8% | 14.9% | 48.2% | 6 months |
| 2005 | 45.2% | 13.4% | 20.8% | 20.6% | 9 months |
| 2006 | 46.9% | 13.6% | 15.8% | 23.6% | 10 months |
| 2007 | 48.8% | 11.4% | 17.1% | 22.7% | 10 months |
| 2008 | 50.4% | 08.4% | 21.0% | 20.2% | 10 months |
| 2009 | 62.0% | 10.4% | 19.3% | 18.2% | 12 months |
| 2010 | 62.9% | 9.2% | 17.4% | 19.7% | 12 months |
| 2011 | 61.3% | 10.7% | 18% | 20.8% | 12 months ¹ |

As is readily apparent, sentences for first time tax offenders have increased dramatically over the last decade going from six months to twelve months. Prison sentences have increased from 43.3 percent to over 60 percent of the tax offenders. Probation alone has dropped from

¹ 2004 Sourcebook of Federal Sentencing Statistics (“2004 Post-Blakely Sourcebook” containing sentencing information for the period June 25, 2004, through September 30, 2004) at Tables 12, 13; 2005 Sourcebook of Federal Sentencing Statistics (“2005 Post-Booker Sourcebook” containing sentencing information for the period January 12, 2005, through September 30, 2005) at Tables 12, 13; 2006 Sourcebook of Federal Sentencing Statistics (“2006 Sourcebook” containing sentencing information for the period October 1, 2005, to September 30, 2006) at Tables 12, 13; 2007 Sourcebook of Federal Sentencing Statistics (“2007 Sourcebook” containing sentencing information for the period October 1, 2006 through September 30, 2007) at Tables 12, 13; 2008 Sourcebook of Federal Sentencing Statistics (“2008 Sourcebook” containing sentencing information for the period October 1, 2007 through September 30, 2008) at Tables 12, 13; 2009 Sourcebook of Federal Sentencing Statistics (“2009 Sourcebook” containing sentencing information for the period October 1, 2008 through September 30, 2009) at Tables 12, 13; 2010 Sourcebook of Federal Sentencing Statistics (“2010 Sourcebook” containing sentencing information for the period October 1, 2009 through September 30, 2010) at Tables 12, 13; 2011 Sourcebook of Federal Sentencing Statistics (“2011 Sourcebook” containing sentencing information for the period October 1, 2010 through September 30, 2011 at Tables 12-13).



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almost half of the offenders down to 20.8 percent. Option two would, in this practitioner's view, dramatically reduce probation and increase the imprisonment percentage and imprisonment time. While one can speculate about how much the imprisonment would be raised, and how much probation would be reduced as a policy matter, the result of an option two amendment might well approach no probation and 100 percent imprisonment for first time tax offenders. One might suggest that this is inappropriate as a policy matter and the guidelines should not be amended to permit this, or even close to, this result.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian M. Comisky', written over a circular scribble.

Ian M. Comisky

IMC:emf