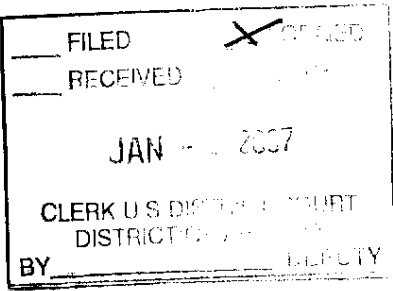


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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8  
9 United States of America,  
10 Plaintiff,  
11 v.  
12 Robert N. Shearburn, Sr.,  
13 Defendant.

CR-06-0177-PHX-NVW  
PLEA AGREEMENT

14 Plaintiff, United States of America, and defendant, Robert N. Shearburn, Sr., hereby agree  
15 to the following disposition of this matter:

16 PLEA

17 Defendant will plead guilty to Count 2 of an Indictment charging defendant with a  
18 violation of Title 26, United States Code, Section 7206(1), Making and Subscribing to a  
19 Materially False Tax Return, a Class E felony offense.

20 TERMS

21 Defendant understands that the Court is required to consider the United States Sentencing  
22 Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining  
23 defendant's sentence. Defendant understands, however, that the Sentencing Guidelines are only  
24 advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise  
25 its discretion to impose any reasonable sentence up to the maximum set by statute for the crimes  
26 of conviction.

1 **1. Maximum Penalties**

2 a. A violation of Title 26, United States Code, Section 7206, is punishable by a  
3 maximum fine of \$100,000, a maximum term of imprisonment of 3 years, or both, and a term of  
4 supervised release of up to 1 year.

5 b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform  
6 Act of 1984, the court shall:

7 (1) Order the defendant to make restitution to any victim of the offense unless,  
8 pursuant to Title 18, United States Code, Section 3663 and Section 5E1.1 of the Guidelines, the  
9 court determines that restitution would not be appropriate in this case;

10 (2) Order the defendant to pay a fine, which may include the costs of probation,  
11 supervised release or incarceration, unless, pursuant to Title 18, United States Code 3611 and  
12 Section 5E1.2(e) of the Guidelines, the defendant establishes the applicability of the exceptions  
13 found therein;

14 (3) Order the defendant, pursuant to Title 18, United States Code, Section 3583  
15 and Section 5D1.1 and 2 of the Guidelines to serve a term of supervised release when required  
16 by statute or when a sentence of imprisonment of more than one year is imposed, and the court  
17 may impose a term of supervised release in all other cases.

18 c. Pursuant to Title 18, United States Code, Section 3013, the court is required to  
19 impose a special assessment on the defendant of \$100.00. The special assessment is due at the  
20 time the defendant enters the plea of guilty, but in no event shall it be paid later than the time of  
21 sentencing.

22 **2. Agreements Regarding Sentencing**

23 a. The United States and Defendant stipulate, pursuant to Fed. R. Crim. P. 11(c)(1)(C),  
24 that provable loss to the victim totals \$ 232,400. This amount includes the total tax loss for  
25 purposes of relevant conduct pursuant to Guidelines section 1B1.3.

26 b. The United States and Defendant stipulate, pursuant to Fed. R. Crim. P. 11(c)(1)(C),  
27 that Defendant's total offense level shall not exceed 13.  
28

1 c. The United States and Defendant stipulate, pursuant to Fed. R. Crim. P. 11(c)(1)(C),  
2 that Defendant's sentence shall not exceed the low-end of the applicable Guideline range.

3 d. The United States and Defendant stipulate, pursuant to Fed. R. Crim. P. 11(c)(1)(C),  
4 that the 2000 United States Sentencing Commission Guidelines Manual shall be used to  
5 calculate Defendant's advisory Guideline sentence.

6 e. Defendant may move the Court for a downward adjustment to the applicable  
7 Guideline range. However, the government reserves the right to oppose any such motion.

8 f. The government will dismiss Counts 1 - 3 of the Indictment against Margaret V.  
9 Shearburn.

10 g. This agreement does not in any manner restrict the actions of the Internal Revenue  
11 Service to attempt to collect any unpaid taxes it believes it is owed by Defendant in excess of  
12 \$232,400.

13 h. Acceptance of Responsibility Assuming the defendant makes full and complete  
14 disclosure to the Probation Department of the circumstances surrounding the defendant's  
15 commission of the offense, if the defendant is eligible for the two-point reduction pursuant to  
16 Section 3E1.1 of the Guidelines, if the defendant's base offense level is 16 or greater, if the  
17 defendant demonstrates an acceptance of responsibility for this offense up to and including the  
18 time of sentencing, the United States, pursuant to Fed. R. Crim. P. 11(c)(1)(C), will stipulate to  
19 a three-point reduction in the applicable sentencing guideline offense level as set forth in Section  
20 3E1.1 of the Guidelines. If the defendant's base offense level is less than 16 and the other above  
21 conditions are met, the government will stipulate to a two-point reduction in the offense level.

22 **3. Breach of the Agreement**

23 If the defendant fails to comply with any obligation or promise pursuant to this  
24 agreement, the United States:

25 (1) may, in its sole discretion, declare any provision of this agreement null and  
26 void in accordance with paragraph (6) below and the defendant understands that the defendant  
27 will not be permitted to withdraw the plea of guilty made in connection with this agreement;  
28

1 (2) may prosecute the defendant for any offense known to the United States for  
2 which the defendant is responsible, and defendant waives any statute of limitations, Speedy Trial  
3 Act, and constitutional restrictions for bringing charges after the execution of this agreement;

4 (3) may argue for a maximum statutory sentence for the offenses to which  
5 defendant has pled guilty;

6 (4) may use in any prosecution any information, statements, documents, and  
7 evidence provided by defendant both before and after the plea agreement including derivative  
8 evidence;

9 (5) may advise the Bureau of Prisons that defendant is no longer a cooperating  
10 witness, and recommend redesignation of defendant to a higher custodial level.

11 (6) If there is a dispute regarding the obligations of the parties under this  
12 agreement, the United States District Court shall determine whether the United States or the  
13 defendant has failed to comply with this agreement including whether the defendant has been  
14 truthful.

15 **4. Agreement to Make Restitution; Agreement to Fine**

16 Defendant specifically agrees to make restitution to the Internal Revenue Service for  
17 unpaid taxes in the amount of \$232,400.

18 **5. Agreement to Dismiss or Not to Prosecute**

19 a. The United States Attorney for the District of Arizona agrees pursuant to Fed. R.  
20 Crim. P. 11(c)(1)(A) that it will dismiss Counts 1 and 3 of the Indictment at the time of  
21 Defendant's sentencing.

22 b. The United States Attorney for the District of Arizona agrees pursuant to Fed. R.  
23 Crim. P. 11(c)(1)(A) that it will not prosecute the defendant for any other alleged offenses  
24 committed by him, and known by the government, in connection with his solicitation of  
25 investments for National Medical Funding and Carmen J. Palmieri between 1998 and November  
26 2002.

27  
28

1 c. This agreement does not in any manner restrict the actions of the United States in  
2 any other district nor bind any other United States Attorney's Office. The United States is not  
3 presently aware of any other federal or state investigations or charges involving defendant.

4 **6. Waiver of Defenses and Appeal Rights**

5 a. The defendant waives any and all motions, defenses, probable cause determinations,  
6 and objections which the defendant could assert to the indictment or information or to the  
7 Court's entry of judgment against the defendant and imposition of sentence upon the defendant,  
8 providing the sentence is consistent with this agreement. The defendant further waives: (1) any  
9 right to appeal the Court's entry of judgment against defendant; (2) any right to appeal the  
10 imposition of sentence upon defendant under Title 18, United States Code, Section 3742  
11 (sentence appeals); and (3) any right to collaterally attack defendant's conviction and sentence  
12 under Title 28, United States Code, Section 2255, or any other collateral attack. The defendant  
13 acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the  
14 defendant might file challenging his conviction or sentence in this case.

15 b. The Government likewise waives its right of appeal in this matter if the sentence  
16 imposed is consistent with the terms of this agreement.

17 **7. Perjury and Other False Statement Offenses or Other Offenses**

18 Nothing in this agreement shall be construed to protect the defendant in any way from  
19 prosecution for perjury, false declaration or false statement, or any other offense committed by  
20 defendant after the date of this agreement. Any information, statements, documents, and  
21 evidence which defendant provides to the United States pursuant to this agreement may be used  
22 against the defendant in all such prosecutions.

23 **8. Reinstitution of Prosecution**

24 If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the  
25 United States will be free to prosecute the defendant for all charges of which it has knowledge,  
26 and any charges that have been dismissed because of this plea agreement will be automatically  
27 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the  
28

1 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later  
2 charges or proceedings. The defendant understands that any statements made at the time of the  
3 defendant's change of plea or sentencing may be used against the defendant in any subsequent  
4 hearing, trial, or proceeding as permitted by Fed. R. Crim. P. 11(f).

5 **9. Disclosure of Information to U.S. Probation Office**

6 Defendant understands the United States' obligation to provide all information in its file  
7 regarding defendant to the United States Probation Office.

8 The defendant will cooperate fully with the United States Probation Office. Such  
9 cooperation will include truthful statements in response to any questions posed by the Probation  
10 Department including, but not limited to:

11 (7) All criminal history information, i.e., all criminal convictions as defined  
12 under the Sentencing Guidelines.

13 (8) All financial information, e.g., present financial assets or liabilities that  
14 relate to the ability of the defendant to pay a fine or restitution.

15 (9) All history of drug abuse which would warrant a treatment condition as part  
16 of sentencing.

17 (10) All history of mental illness or conditions which would warrant a treatment  
18 condition as a part of sentencing.

19 **10. Forfeiture, Civil, and Administrative Proceedings**

20 a. Nothing in this agreement shall be construed to protect the defendant from civil  
21 forfeiture proceedings or prohibit the United States from proceeding with and/or initiating an  
22 action for civil forfeiture.

23 b. Defendant will identify all assets and identify the source of income used to obtain  
24 the assets. Defendant will identify all assets used to facilitate the commission of any crime  
25 charged in this indictment. Defendant will testify truthfully in any civil forfeiture proceeding.

26 c. Further, this agreement does not preclude the United States from instituting any  
27 civil or administrative proceedings as may be appropriate now or in the future.  
28

1 **FACTUAL BASIS**

2 The defendant understands that the government would be required to prove at trial the  
3 following essential elements of the offense to which he is pleading, as of the date of the offense  
4 charged:

5 **26 U.S.C. Section 7206(1) - Making and Subscribing to a Materially False Tax Return**

6 *First*, on or about April 5, 2001, within the District of Arizona and elsewhere, Defendant  
7 made and signed a tax return for the year 2000 that he knew contained false information as to  
8 a material matter;

9 *Second*, the return contained a written declaration that it was being signed subject to the  
10 penalties of perjury; and

11 *Third*, in filing the false tax return, Defendant acted willfully

12 Source: 9<sup>th</sup> CIR. CRIM. JURY INSTR. 9.37 (2000).

13 The defendant further agrees that if this matter were to proceed to trial the United States  
14 could prove the following facts beyond a reasonable doubt:

15 On or about April 5, 2001, in the District of Arizona, I filed a U.S. Individual Income Tax  
16 Return for the calendar year 2000 ("the 2000 Tax Return"). I, under penalty of perjury, signed  
17 the 2000 Tax Return verifying that the information in it was true and correct. Specifically, I  
18 reported in the 2000 Tax Return that my reported adjusted gross income was \$58,806, my  
19 taxable income was \$28,616 and my tax due and owing was \$2,000. When I filed the 2000 Tax  
20 Return, I knew that my adjusted gross income, taxable income and tax due and owing far  
21 exceeded the amounts I declared. In fact, for tax years 1999 - 2001, my under-reported gross  
22 income was approximately \$830,000, with a tax due and owing of \$232,400. I received the  
23 majority of this under-reported gross income during tax year 2000.

24 I understand that I will have to swear under oath to the accuracy of this statement, and if  
25 I should be called upon to testify about this matter in the future, any intentional material  
26  
27  
28

1 inconsistencies in my testimony may subject me to additional penalties of perjury or false  
2 swearing which may be enforced by the United States under this agreement.

3 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

4 I have read each of the provisions of the entire plea agreement with the assistance of  
5 counsel and understand its provisions.

6 I have discussed the case and my constitutional and other rights with my attorney. I  
7 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty,  
8 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present  
9 evidence in my defense, to remain silent and refuse to be a witness against myself by asserting  
10 my privilege against self-incrimination -- all with the assistance of counsel -- and to be presumed  
11 innocent until proven guilty beyond a reasonable doubt.

12 I am aware that the essential elements of the offense to which I am pleading, as of the  
13 date of the offense charged, are as set forth in the factual basis of this plea agreement.

14 I agree to enter my guilty plea as indicated above on the terms and conditions set forth  
15 in this agreement.

16 I have been advised by my attorney of the nature of the charges to which I am entering  
17 my guilty plea. I have further been advised by my attorney of the nature and range of the  
18 possible sentence and that my ultimate sentence will be determined after consideration of the  
19 advisory Sentencing Guidelines. I understand that the Guideline Range referred to herein or  
20 discussed with my attorney is not binding on the court and is merely an estimate.

21 My guilty plea is not the result of force, threats, assurances or promises other than the  
22 promises contained in this agreement. I agree to the provisions of this agreement as a voluntary  
23 act on my part, rather than at the direction of or because of the recommendation of any other  
24 person, and I agree to be bound according to its provisions.

25 I fully understand that, if I am granted probation or placed on supervised release by the  
26 court, the terms and conditions of such probation/supervised release are subject to modification  
27 at any time. I further understand that, if I violate any of the conditions of my  
28

1 probation/supervised release, my probation/supervised release may be revoked and upon such  
2 revocation, notwithstanding any other provision of this agreement, I may be required to serve  
3 a term of imprisonment or my sentence may otherwise be altered.

4 I agree that this written plea agreement contains all the terms and conditions of my plea  
5 and that promises made by anyone (including my attorney), and specifically any predictions as  
6 to the guideline range applicable, that are not contained within this written plea agreement are  
7 without force and effect and are null and void.

8 I am satisfied that my defense attorney has represented me in a competent manner.

9 I am fully capable of understanding the terms and conditions of this plea agreement. I  
10 am not now on or under the influence of any drug, medication, liquor, or other intoxicant or  
11 depressant, which would impair my ability to fully understand the terms and conditions of this  
12 plea agreement.

13  
14 12-18-06  
Date

  
ROBERT N. SHEARBURN, SR.  
Defendant


15  
16 **DEFENSE ATTORNEY'S APPROVAL**

17 I have discussed this case and the plea agreement with my client, in detail and have  
18 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional  
19 and other rights of an accused, the factual basis for and the nature of the offense to which the  
20 guilty plea will be entered, possible defenses, and the consequences of the guilty plea including  
21 the maximum statutory sentence possible. I have further discussed the concept of the advisory  
22 sentencing guideline with the defendant. No assurances, promises, or representations have been  
23 given to me or to the defendant by the United States or by any of its representatives which are  
24 not contained in this written agreement. I concur in the entry of the plea as indicated above and  
25 on the terms and conditions set forth in this agreement as in the best interests of my client. I  
26

27 ///  
28

1 agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all  
2 the requirements of Fed. R. Crim. P. 11.

3  
4 Date 12/20/06

  
5 DAVID R. BOSSE  
6 Attorney for Defendant

7 **UNITED STATES' APPROVAL**

8 I have reviewed this matter and the plea agreement. I agree on behalf of the United States  
9 that the terms and conditions set forth are appropriate and are in the best interests of justice.

10  
11 PAUL K. CHARLTON  
12 United States Attorney  
13 District of Arizona

14 1/9/07  
15 Date

  
16 JOHN R. LOPEZ IV  
17 Assistant United States Attorney

18 **COURT'S ACCEPTANCE**

19 Date \_\_\_\_\_

20 HON. NEIL V. WAKE  
21 United States District Judge