

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	:	CASE NO. 2:18-cr-55
	:	
Plaintiff,	:	JUDGE GRAHAM
	:	
v.	:	
	:	<u>GOVERNMENT’S SENTENCING</u>
	:	<u>MEMORANDUM</u>
JONATHAN SPAYDE,	:	
	:	
Defendant.	:	

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The United States of America, by and through its undersigned counsel, respectfully submits this memorandum for the sentencing of Defendant Jonathan Spayde (“Defendant” or “Spayde”).

**I. Factual Background**

Since at least 2001, Defendant has been the sole owner of a single-member limited liability company, Landfare Ltd (“Landfare”). Landfare, located in Grandview Heights, Ohio, provides landscape design and build services.

For the 2013, 2014, and 2015 tax years, Spayde willfully filed false Forms 1040, U.S. Individual Income Tax Returns (“Forms 1040”), including false Schedules C, Profit and Loss from Business for Landfare, which are part of the Forms 1040 with the Internal Revenue Service (IRS). Spayde claimed false business deductions for each of these years. For example, in 2013, Spayde claimed a \$64,472 false expense deduction for the purchase of a new Mercedes automobile; in 2014, Spayde claimed a \$107,500 false expense deduction for the purchase of a new Mercedes automobile; and again in 2015, Spayde claimed an \$11,160 false expense deduction for the purchase of a new Mercedes automobile. For each tax year, Defendant told his tax return preparers

that the vehicles were for work, when he knew that, in fact, the vehicles were for personal use and rarely, if ever, used for business.

For the 2011 through 2015 tax years, Spayde also filed false federal tax returns by underreporting the income earned by Landfare. For the 2011 through 2014 tax years, Defendant skimmed monies from Landfare by asking for and receiving payments from clients in cash. For the 2013 through 2015 tax years, Spayde also skimmed receipts from Landfare by asking for and receiving checks from clients, which listed his personal name as the payee, instead of Landfare. Instead of depositing the full amount of the checks into Landfare's business account, Defendant diverted the funds in three different ways: (1) Spayde made partial business deposits in which he received cash back, (2) Spayde cashed the checks, and (3) Spayde deposited checks into his personal bank account. The effect of these actions was concealment of the income from Landfare's bank statements. For tax year 2015, Spayde provided Landfare's bank statements, along with check registers, which also omitted the diverted income, to his tax return preparer to prepare his Form 1040. For the 2015 tax year, Defendant willfully diverted, or did not report, \$123,395.71 in income. In total, Spayde's submission of false Forms 1040 for the 2013 through 2015 tax years resulted in a tax loss of \$86,189 to the IRS.

## **II. Procedural History**

On February 28, 2018, the United States Attorney for the Southern District of Ohio filed a one-count Information charging Spayde with the filing of a false tax return as described above, in violation of 26 U.S.C. § 7206(1). On March 28, 2018, Spayde pled guilty to Count One of the Information pursuant to a Rule 11(c)(1)(A) Plea Agreement.

### **III. Sentencing Guidelines Calculation**

#### **a. Statutory Maximum Sentence**

The maximum sentence for the filing of a false tax return is three years' imprisonment, a \$250,000 fine, a one-year period of supervised release, and a \$100 special assessment. Defendant also agreed to make mandatory restitution of \$86,189 to the IRS.

#### **b. Sentencing Guidelines Calculation**

In imposing sentence, the Court must take into account the considerations of sentencing set forth in 18 U.S.C. § 3553(a). *United States v. Booker*, 543 U.S. 220, 261 (2005). First, as stated in Section 3553(a)(4), the Court must determine and consider the sentencing range established by the United States Sentencing Guidelines (“Guidelines” or “U.S.S.G.”). As the Presentence Investigation Report (“PSR”) correctly calculates: the tax loss associated with the filing of false tax returns is more than \$40,000 but less than \$100,000, which corresponds to a base offense level **14** pursuant to U.S.S.G. §§ 2T1.1(a)(1) and 2T4.1(E); there is a **2**-level decrease for acceptance of responsibility under U.S.S.G. 3E1.1(a). Per the PSR’s calculation, the total adjusted offense level is **12**; at a Criminal History Category I, the guideline range is 10-16 months.

### **IV. The Proper Sentence**

Once the Court has properly calculated the guideline range, the Court must next consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional

treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

The nature and circumstances of this case are straightforward and serious. Spayde knowingly and willfully arranged his business practices such that he could skim money from his company, which he then did not report to his accountant for its inclusion on his tax returns. In total, Spayde failed to report \$123,395.71 in income to the IRS for the 2015 tax year. For the 2013 through 2015 tax years, Spayde also falsely claimed the purchase of one Mercedes after another as a business expense, when he knew the vehicles were actually for personal use. As a result of these actions, Spayde owes the IRS \$86,189 in restitution.

Certainly, the Court must also consider the history and characteristics of Defendant. Spayde enjoyed a good upbringing, boasts no criminal history, is well educated and, since 2001, has successfully owned and operated Landfare. By all accounts, Spayde possessed the skills needed to run a legitimate business and the instant conduct appears to be an aberration.

The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense also suggest that some restrictions on liberty are necessary in this case. The recommended fine of \$5,500 is also appropriate and supports these sentencing goals. The sentence imposed must reflect the criminal decisions Spayde made every time he diverted cash from the business, asked a client to write a check out to him personally or lied to his accountant about his income and expenses.

The Court must also consider the need for the sentence imposed to afford adequate deterrence to criminal conduct. The deterrent message and effect of the sentence imposed by the

Court in this case will resonate with other would-be tax cheats that there are consequences for those who violate the internal revenue laws by underreporting their income to the IRS, as Defendant did in this case.

Finally, there is a need to provide restitution in this case. As part of the Plea Agreement, Defendant agreed to pay \$86,189 in restitution to the IRS. On August 7, 2018, the government received notice that Defendant had, in fact, paid this restitution obligation in whole to the IRS.

**V. Conclusion**

For the reasons set forth above, the United States respectfully defers to the Court as to a period of incarceration, but requests that, in addition, Defendant Jonathan Spayde be ordered to pay \$86,189 in total restitution to the IRS and ordered to pay a fine of \$5,500.

Respectfully submitted,

BENJAMIN C. GLASSMAN  
United States Attorney

*s/Jessica W. Knight*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Government's Sentencing Memorandum* was electronically served via the Court's CM/ECF system this 8th day of August, 2018 upon Terrance Grady and Kate Dodson, Esq., Counsel for Jonathan Spayde.

*s/Jessica W. Knight*

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