UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 5:06-cr-22(S1)-Oc-10GRJ

WESLEY TRENT SNIPES

UNITED STATES' SENTENCING MEMORANDUM
REGARDING DEFENDANT WESLEY TRENT SNIPES

The United States of America, by and through the undersigned attorneys for the United States, submits this sentencing memorandum regarding defendant Wesley Trent Snipes. For the reasons set forth below, the United States respectfully urges the Court to sentence defendant Snipes to a term of 36 months' imprisonment and a fine of at least $5 million.

I. Introduction

The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. The sentence for the criminal tax scofflaw must be commensurate with the gravity of the offense, and should act as a deterrent to other potential violators. This case cries out for the statutory maximum term of imprisonment, as well as a substantial fine, because of the seriousness of defendant Snipes' crimes and because of the singular opportunity this case presents to deter tax crime nationwide.

For nearly a decade, Snipes has engaged in a campaign of criminal tax conduct combining brazen defiance with insidious concealment. By these means, Snipes has

escaped paying more than $15 million in income tax to the Internal Revenue Service (IRS), and has pursued an intended fraudulent harm to the United States Treasury of more than $41 million.[1] But for the limits of the statutory maximum sentence, the sentencing guidelines would call for term of imprisonment of more than 10 years. The intended loss in this case ($41,038,051)[2] is so large that it is 100 times the amount ($400,000) that would place Snipes in a guidelines range calling for 36 months' imprisonment. However, even beyond the enormous tax harm caused by Snipes, the multifarious nature of his schemes and the deterrence value of a substantial prison sentence for this truly notorious offender call for a full 36 months in prison.

II. The Serious Nature of Snipes' Offense Conduct

Title 18, U.S.C. § 3553(a)(1), requires that "the nature and circumstances of the offense" be considered in sentencing. As detailed below, the nature and circumstances of defendant Snipes' offenses demonstrate that his crimes are much more serious than those in a "garden variety" failure to file case.

A. Enormous Loss Attributable To Snipes' Misconduct

Snipes was convicted on three counts of willfully failing to file federal individual income tax returns, for the years 1999, 2000, and 2001, in violation of 26 U.S.C. § 7203. To determine the total tax loss attributable to these offenses, "all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated."

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[1] Presentence Investigation Report ("PSR") ¶ 70. References to the PSR are to the version provided to counsel on April 11, 2008.

[2] Id.

U.S.S.G. § 2T1.1, Note 2; see United States v. Campbell, 491 F.3d 1306, 1314 n.11 (11th Cir. 2007) (neither Booker nor Blakely limit a district court's ability to consider sentencing facts proven to the judge by a preponderance of the evidence). As determined by the Probation Office, the amount of income Snipes refused to report and the corresponding amount of tax he escaped paying is very large:[3]

Tax Year	Unreported Gross Income Proved At Trial	20% of Unreported Gross Income Proved At Trial[4]	Taxable Income Per Revenue Agent Report[5]	Unpaid Income Tax Liability Per Revenue Agent Report
1999	$10,064,603	$2,012,920	$5,316,233	$2,083,301
2000	$2,331,054	$466,210	(1,671,702)	$0
2001	$1,462,762	$292,552	$13,064,294	$5,085,249
Subtotal for Counts of Conviction	$13,858,419	**$2,771,682**	$18,380,527	**$7,168,550**
2002	$5,886,740	$1,177,348	$2,717,990	$1,025,343
2003	$4,564,973	$912,994	$10,056,575	$3,495,008
2004	$13,586,918	$2,717,383	$11,374,131	$3,955,589
Total	$37,897,050	**$7,579,410**	$42,529,223	**$15,644,490**

[3] PSR ¶ 67.

[4] U.S.S.G. § 2T.1.1,Note 2(A), provides that if the offense involved failure to file a tax return, the tax loss is 20% of gross income unless a more accurate determination can be made.

[5] Income Tax Discrepancy Adjustments Report, dated 2/13/2008, by Revenue Agent Steward Stich (hereinafter “RAR”).

And when Snipes' false refund claims and fraudulent Bills of Exchange submitted to the Treasury are included, the amount of intended loss is extraordinarily large:

Fraudulent Activity	Snipes	Kahn	Rosile
Failure to file/pay taxes:			
Convicted counts			
III - V (income totaling $18,380,527)	$7,168,550	$7,168,550	
Acquitted counts			
Counts VI - VII (income totaling $24,148,696)	$8,475,940	$8,475,940	
Subtotal:	$15,644,490	$15,644,490	
False Claims ("861 Argument")			
Snipes' 1996 1040X	$4,032,806	$4,032,806	
Snipes' 1997 1040X	$7,360,755	$7,360,755	$7,360,755
Other ARL Clients		$3,853,192	$3,853,192
Subtotal:	$11,393,561	$15,246,753	$11,213,947
Bills of Exchange			
October 26, 2000	$1,000,000	$1,000,000	
December 31, 2000	$12,000,000	$12,000,000	
September 10, 2002	$1,000,000	$1,000,000	
Subtotal:	$14,000,000	$14,000,000	
Totals:	**$41,038,051**	**$44,891,243**	**$11,213,947**

B. Defendant's Meritless Attempts to Reduce Tax Loss

Defendant's objections to the PSR suggest that he is attempting to avoid the application of the concept of relevant conduct. See U.S.S.G. § 1B1.3. However, U.S.S.G. § 2T.1.1, Note 2, provides that "all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan [i.e., is relevant conduct, see U.S.S.G. § 1B1.3(a)(2),] unless the evidence demonstrates that the conduct is clearly unrelated." For sentencing purposes, the Court is entitled to consider such relevant conduct as it finds by a preponderance of the evidence, even when related to acquitted conduct. See United States v. Faust, 456 F.3d 1342, 1348 (11th Cir. 2006) (affirming sentence based in part on acquitted conduct in the face of a Due Process challenge); see also United States v. Campbell, 491 F.3d 1306 (11th Cir. 2007) (consideration of acquitted conduct proper as long as the judge does not impose a sentence in excess of that authorized by the jury verdict).

The issue of acquitted and uncharged conduct is, in any event, effectively moot in this case, as the statutory maximum sentence of 36 months is easily reached solely by reason of the tax loss associated with the counts of conviction. Thus, the additional tax loss attributable to relevant conduct does not have a practical effect in determining the Base Offense Level under the guidelines. Apparently recognizing this, defendant has mounted a wholesale challenge to the definition of tax loss.

The sentencing guidelines define "tax loss" as: "the total amount of loss that was the object of the offense (i.e., the loss that would have resulted had the offense been successfully completed)." U.S.S.G. § 2T1.1(c)(1). Section 2T1.1 provides that "[i]f the offense involved failure to file a tax return, the tax loss shall be treated as equal to 20%

of the gross income (25% if the taxpayer is a corporation) less any tax withheld or otherwise paid, unless a more accurate determination of the tax loss can be made." U.S.S.G. § 2T1.1(c)(2), Note (A).

The amount of unreported gross income proved at trial was $10,064,603 for 1999; $2,331,054 for 2000; and $1,462,762 for 2001; which figures total $13,858,419. Accordingly, even without considering relevant conduct, the tax loss for the counts of conviction alone is $2,771,682 (i.e., $13,858,419 x 20%), unless a more accurate determination of the tax loss can be made.

In an attempt to provide the Court with complete information, the United States provided the Probation Office with the report of Revenue Agent Steward Stich (RAR). The RAR, which is supported by more than 100 detailed schedules, is a conservative calculation of defendant Snipes' tax liabilities for the years 1999 - 2004. The RAR was prepared for "criminal tax purposes," and is conservative with respect to both income attributed and deductions allowed to Snipes. The RAR calculates the tax loss for the years 1999 - 2001 (i.e., the counts of conviction) as $7,168,550, and the tax loss for 1999 - 2004 (i.e., the counts charged in the indictment) as $15,644,490.[6]

At the April 11, 2008 meeting with the Probation Officer, counsel for the defendant proffered a one-page, high-level summary schedule showing a purported tax loss of merely $227,959 for the years 1999 - 2001. Counsel also proffered a one-page analysis captioned "Detail of RAR Analysis by Year," covering only 1999, which

[6] The $15,644,490 figure is the tax loss associated with defendant's failure to file tax returns, and does not include the loss intended from his false claims for refunds or Bills of Exchange. When the loss from that relevant conduct is considered, the total intended tax loss rises to $41,038,051.

putatively reduces taxable income by means of a "net operating loss carryover," before it makes the tax virtually vanish by means of a claimed "foreign tax credit." No other schedules have been provided to date.

Defendant's schedules assert that the RAR calculations are erroneous, among other reasons, due to its alleged "failure to include all business expenses," "double counting of income," and "counting deductible business expenses as income." Defendant's unsupported assertions are factually incorrect.[7] Moreover, they are legally inapplicable for purposes of calculating intended tax loss in a criminal tax sentencing. A sentencing court should look to intended loss, not actual loss, in calculating "tax loss" for purposes of the guidelines. See U.S.S.G. § 2T1.1(c)(1). Indeed, at least three courts of appeals have concluded that under the guidelines, there is no requirement that the sentencing court credit a defendant for any deduction the defendant might have claimed, but did not, in determining the applicable tax loss. See United States v. Chavin, 316 F.3d 666, 677 (7th Cir. 2002) ("The guidelines state that 'tax loss is the total amount of loss that was the object of the offense' . . . We take the phrase 'the object of the offense' to mean that the attempted or intended loss, rather than the actual

[7] As an example of the RAR being conservative with respect to income, the RAR did not count as income more than $400,000 transferred from an account in Switzerland to the main Kymberlyte Production Services operating account in 2001. These monies were not counted as taxable despite the fact that it was Snipes' policy to send checks received at his business office for deposit offshore. 1/18/08 Trans. at 21-22. As an example of the RAR being conservative in disallowing deductions, the RAR did not disallow to Kymberlyte, as non-deductible, non-business expenses, or charge to Snipes, as additional income, some $498,000 in personal payments to Snipes' grandmother, his former wife, his then-fiancee, his personal lawyer, a tax defier organization, and M & S Finance, the Swiss alter-ego to which he fraudulently conveyed his business holdings in 1999. See discussion infra at IIJ.

loss to the government, is the proper basis of the tax-loss figure."). The Seventh Circuit also determined that the opposite conclusion "would insert subjectivity into the calculation [of tax loss] because it would require us to create a 'perfect' tax return, taking into account all the legitimate unclaimed deductions, which would undoubtedly engender a great deal of dispute between the parties over which deductions were legitimate and which were not." Id. at 678. Accordingly, the court concluded that "the current definition of tax loss appears to exclude consideration of the unclaimed deductions." Id.; accord United States v. Spencer, 178 F.3d 1365, 1368 (10th Cir. 1999) ("It must be remembered that, in tax loss calculations under the sentencing guidelines, we are not computing an individual's tax liability as is done in a traditional audit. Rather, we are merely assessing the tax loss resulting from the manner in which the defendant chose to complete his income tax returns"); United States v. Delfino, 510 F.3d 468, 473 (4th Cir. 2007) petition for cert. filed, No. 07-1273 ("The Delfinos chose not to file their income tax returns. They also chose not to cooperate with the initial IRS audit, at which time they could have claimed deductions to which they were entitled. By doing so, they forfeited the opportunity to claim these deductions.").[8]

Regardless of any dispute over the proper calculation of defendant Snipes' tax liabilities, there is no need for his sentencing hearing to turn into a battle of experts. If the Court declines to find that the Revenue Agent's calculations are "a more accurate determination of the tax loss," the Court can and should determine the tax loss to be

[8] Cf. United States v. Gordon, 291 F.3d 181, 187 (2d Cir. 2002) (stating in dictum that the appropriate calculation of the tax loss to be charged to a defendant at sentencing must give the defendant credit for any deduction the defendant might properly have claimed but did not claim).

20% of unreported income, pursuant to §2T1.1(c)(2). With respect to the counts of conviction, 1999-2001, that number is $2,771,682. When the 2002-2004 years are included, the tax loss is $7,579,410. Even if the Court adopted defendant's extremely low tax figures, he would remain liable for the loss attributable to the false claims and BOEs as relevant conduct. Indeed, even if the Court were only to find as relevant conduct the $7.3 million loss attributable to the false claim of which his co-defendants were convicted, that loss alone would render a Base Offense Level of 26, calling for 63 to 78 months' imprisonment, but for the statutory maximum.

C. Snipes Obstructed the IRS Through ARL/GLGM

With the help of co-defendants Eddie Kahn and Douglas Rosile of the American Rights Litigators/Guiding Light of God Ministries (ARL/GLGM) tax fraud mill, Snipes brazenly waged a campaign against the IRS using a panoply of schemes. These schemes included:

- Filing two false refund claims totaling over $11 million based on the frivolous argument that domestically-derived income was not subject to U.S. income tax (the so-called "861 argument").
- Submitting bogus Uniform Commercial Code filings purporting to make it possible for Snipes to personally draw upon the United States Treasury.
- Submitting so-called Bills of Exchange falsely denominated in the millions of dollars to use in purported payment of Snipes' tax obligations.
- Sending correspondence threatening a frivolous complaint against IRS workers to the Treasury Inspector General for Tax Administration.
- Sending frivolous demands to the IRS for a so-called "Determination Letter" as to Snipes' status as a taxpayer.
- Making frivolous Freedom of Information Act requests for IRS records.

D. Snipes Failed To File Business and State Tax Returns

Snipes' actions were not limited to simply refusing to file his own personal tax returns. Since 1998, Snipes has not filed corporate or trust returns for his companies, Amen Ra Films, Kymberlyte Production Services, or SST Swiss Sterling Trust, despite the fact that tens of millions of dollars in income flowed through those business entities. Ex. 54-1 to 54-7; Ex. 55-1 to 55-6; Ex. 56-1 to 56-3. Snipes also enrolled Amen Ra Films as an ARL client. Ex. 112. Furthermore, Snipes failed to file tax returns or pay taxes due to the State of California during the prosecution years, Ex. 33, and he sent a bogus $27,485 Bill of Exchange to the State of Florida taxing authorities. Ex. 87-41.

Snipes' failure to meet his state tax obligations demonstrates that he was trying to escape taxes generally, and illustrates the duplicity of Snipes' claim that he was merely waiting for answers from the IRS regarding his federal tax obligations. That conclusion follows from the fact that the "861 argument," being based upon a putative construction of a federal statute, cannot be construed, even under the bizarre standards of Kahn and Rosile, to mean that domestically-derived income is exempt from state taxation. Likewise, Snipes' failure to file business returns cannot be explained away by his contentions that he was personally not subject to taxation because he was a "stateless person" or "nonresident alien," Ex. 106, or a "nontaxpayer," Ex. 129, but perversely was not "an individual." Ex. 128-2. Even if these risible claims about himself were true, none of them would justify Snipes' failures to file corporate and trust tax returns for his business entities.

Moreover, none of Snipes' twisted interpretations of United States law would apply in foreign countries. Predictably, however, Snipes fought to escape paying any

taxes to Canada while he was being paid $343,750 per week making “Blade III” in that country. Ex. 15. Indeed, Snipes sued his employer, New Line Cinema, for, among other things, allowing the Canadian authorities to withhold taxes from these payments. Ex. 2-5. It is clear that Snipes' campaign to escape taxation was directed toward any government under any auspices.

E. Snipes Promoted Tax Misconduct By His Own Employees

While committing his own tax crimes, Snipes also promoted tax misconduct among his employees. He sponsored a seminar in his California home where he invited Kahn to pitch the “861 argument” and other fraudulent tax positions to attendees, including some of his employees. 1/18/08 Trial Transcript (“Trans.”) at 10. Indeed, some of Snipes' employees became clients of ARL. At least two of them filed false tax refund claims prepared by Rosile. Ex. 90-1. Notably, after the seminar, Snipes' company stopped withholding employment taxes from the wages paid to its employees. Instead, he paid gross wages without withholding the required employment taxes. See PSR ¶ 103 (citing 19 state tax liens in California and New York). When Carmen Baker contacted the IRS and began paying employment taxes on her own, she was pressured by Snipes for having done so. 1/18/08 Trans. at 18.

F. Snipes Threatened Government Employees

Further demonstrating that the nature of Snipes' offenses is more serious than the “garden variety” failure to file tax case is his resort to threats and calumny against government employees. For example, after Snipes was advised that his 1996 Form 1040X claim for a $4 million refund had been rejected as frivolous, Snipes responded by letter threatening to seek the termination of an IRS employee. Ex.87-7. Snipes later

sent letters to one of the investigating special agents challenging his authority to investigate tax crimes. Ex. 139, 140. In June of 2004, Snipes sent a letter to the Secretary of the Treasury, claiming that he "has been the victim of fraud by the Internal Revenue Service and its employees, agents, contractors, and associates by coercive deception." Ex. 129-1. In that letter, Snipes railed about "identity theft" and "extortion" by the IRS. Most flagrantly, *after he was indicted*, Snipes sent a manifesto to government officials, including one of the prosecutors in this case, claiming that "any attempt to penalize me for pointing out your illegal activities shall constitute witness tampering, which is a criminal violation of 18 U.S.C. §1512," and threatening that "pursuit of such a high profile target will open the door to your increased collateral risk...." Ex. 106.[9] In the same vein, Snipes warned that "by indicting me . . . the Department of Justice and the IRS are engaging in criminal activities," and threatened "this is a CRIMINAL trespass for which I intend to file a criminal complaint against you and the court if you continue in this conspiracy against my rights." Ex. 106.

G. Snipes Inundated the IRS With Obstructive Correspondence

Tellingly, after defendant Kahn fled the country and ARL/GLGM was shut down, defendant Snipes embarked on a new campaign of correspondence targeting the IRS.

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[9] Defendant denies that he sent this document. However, Exhibit 106 was one of the pieces of frivolous correspondence from defendant Snipes to the IRS moved into evidence by the defendant. This very large document was mailed from California in early December of 2006. It is true that defendant Snipes could not have personally mailed this document from California, because he had not yet returned from Namibia to be arraigned before the Court. But the document contains a detailed discussion of defendant Snipes' personal situation regarding his co-defendants and the IRS. It was also signed by him in no fewer than eight places. Two of these signatures were attested by a Namibian notary.

To accomplish his obstructive goals, Snipes signed and sent dozens of frivolous documents in 2004 and 2005. Exs. 127 - 134-2. Some of these documents purported to be "filing statements" for the tax years in which Snipes failed to file returns. Exs. 128-1, 128-2, 134-1, 134-2. Others made various baseless demands and declared the government to be "in default." Exs. 127, 129-1, 132-1.

H. Snipes' Campaign of Tax Defiance Against the IRS

Snipes' use of the above-described tactics to thwart the IRS places him squarely within an entrenched criminal subculture often referred to as "tax protestors." However, Snipes' conduct may more accurately be described as that of a "tax defier" because he rejects the legal foundation of the tax system, despite decades of legal precedent upholding the system's constitutional and statutory validity, and took affirmative steps to impede and obstruct the lawful right of the government to tax. Snipes and his ilk nominally deny that any law makes them liable for tax, citing absurd pseudo-legal theories that self-servingly coincide with their own economic interests. Tax defiers such as Snipes often demand individual responses to their putative "questions" and refuse to accept judicial and administrative rulings explaining the frivolousness of their theories.

For example, in 2004, Snipes wrote to the IRS about its publication, "Why Do I Have to Pay Taxes?," purporting to ask "[i]f congress never created the Agency, what legal or moral authority does the Internal Revenue Service have to enforce anything?" and "[i]s the IRS we all know and love actually an agency of the Department of the Treasury of Puerto Rico?" Ex. 129-1. Ignoring an IRS Frivolous Return Program letter warning him of civil and criminal penalties (Ex. 137-2), Snipes persisted with his obstructive correspondence. Moreover, even after he was indicted for tax crimes,

Snipes brazenly wrote to the IRS announcing, “My question at this point is: Does the IRS help ‘nontaxpayers such as myself in not complying with laws they are clearly not subject to and thereby provide them equal protection of the laws mandated by Section 1 of the Fourteenth Amendment and 42 U.S.C. § 1981?” Ex.106.

Tax defiers often cite a lack of an individual response as a basis for continuing their course of action; but, at the same time, they refuse to accept the answer given when a response is provided. The conundrum presented to tax authorities is well illustrated by the following declaration contained in Snipes’ post-indictment manifesto:

> Any use of the word "frivolous" in your response in reference to anything I say or anything contained in this correspondence shall be defined as "truthful, correct," because that is how I define the word in my own personal vocabulary and in all my interactions with the IRS, the government, and the legal profession. Since the First Amendment guarantees me a right of free speech, it also guarantees me the right to prescribe the exact meaning of words . . .

Ex. 106. The goal of such correspondence is to impede and obstruct the functions of government and to create a putative defense to criminal prosecution.[10] Indeed, Snipes’ manifesto revealingly quotes a piece of literature entitled “Building a Strong Reliance

[10] See e.g., United States v. Clayton, 506 F.3d 405, 407 & 413 (5th Cir. 2007) (in an attempt to "construct[] a putative [good faith] defense centered around his sham § 861 argument," Clayton, at the urging of a proponent of the "861 argument," Larken Rose, began writing letters to the Internal Revenue Service and government officials, demanding that they refute the § 861 argument), petition for cert. filed, No. 07-904. Rose, in turn, was convicted of willfully failing to file tax returns, in violation of 26 U.S.C. 7203, and sentenced to 15 months’ imprisonment. See United States v. Larken Rose, et al., No. 05-CR101 (E.D. Pa.), appeal pending, No. 05-5199 (3d Cir.).

Defense." Ex. 106. Snipes' barrage of documents aimed at the IRS was consistent with a wider campaign to impede and obstruct the functions of the IRS.[11]

I. Snipes Concealed Millions Offshore

The preceding paragraphs outline the overt aspects of Snipes' campaign to thwart the IRS in its duties. However, Snipes also employed more insidious tactics to conceal from the IRS his ownership of assets and receipt of income. To this end, Snipes transferred millions of dollars to accounts in foreign countries throughout the prosecution years. For example, in 1999, the year *before* he joined ARL/GLGM, Snipes moved $2.4 million to Switzerland, Antigua, and the Isle of Man. Ex. 68-2.

In February 2000, Snipes' former accountant Michael Canter wrote to Snipes listing these offshore transfers from the corporate account of Amen Ra Films and seeking information about them so he could prepare Snipes' 1999 individual and corporate tax returns. Ex. 68-2. Canter warned Snipes that he could not legally send money offshore in this fashion and fail to report it to the IRS.[12] Ex. 68-3. Snipes,

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[11] All this obstruction costs honest taxpayers money. The IRS created a centralized Frivolous Return Program to handle the volume of frivolous submissions. 1/24/08 Trans. at 18-25. The IRS also devotes resources to operate a program to handle the bogus "Bills of Exchange" and other non-negotiable instruments sent to the IRS by tax defiers. 1/18/08 Trans. at 175-177. The bogus documents not only burden the IRS, they delay the valid refunds of law abiding taxpayers. The IRS will often issue a tax refund before the merits of the refund are definitively established, 1/25/08 Trans. at 46, so refunds are issued sooner rather than latter. That process, unfortunately, has resulted in refund checks being issued for "861 returns," which the tax defier movement touts as evidence that the "861 argument" is valid. 1/23/08 Trans. at 22-23, 69. The additional scrutiny necessary to avoid creating fodder for tax defiers delays the valid refunds of law abiding taxpayers.

[12] The monies sent offshore in 1999 included $500,000 sent to "Pil-Switerland." Ex. 68-2. In his response to Canter's queries about the transfers, Snipes claimed that (continued...)

however, was undeterred by Canter's warnings. After being dismissed as a client by Starr & Company, Snipes stopped filing returns and established a policy of sending checks received at his New York business office for deposit offshore. 1/18/08 Trans. at 21-22. Furthermore, Snipes instructed New Line Cinema to send the millions of dollars he was paid for acting in "Blade III" directly to an account in Switzerland in the name of his loan-out company, "SST Swiss Sterling Trust," claiming that it lacked a tax identification number because it was "a foreign trust." Ex. 71-3. Such concealment of income is a hallmark of tax fraud.

J. Snipes Used a Fraudulent Conveyance and Sham Entities

Canter repeatedly wrote to Snipes asking for information about Snipes' unusual off-shore transfers of funds so Canter could prepare Snipes' 1999 tax returns. Exs. 68-1; 68-2; 68-3. Snipes duplicitously responded to these inquiries by claiming that "Amen Ra Films, Inc. has no foreign investments," because he had purportedly sold his interest in Amen Ra Films to "M&S Finance & Trust, S.A., a Swiss Trust corporation." Ex. 68-5. Around the same time that Snipes supposedly conveyed Amen Ra Films to "a Swiss Trust corporation," Snipes created a new on-shore U.S. company with virtually the same name; that is, "Amen Ra Films PCT." Ex. 57-1. This was apparently the "new

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[12](...continued)
"Payments to PILL should not be classified as investments." Ex. 68-5. The operators of Prosper International Limited (PIL) / Prosper International League Limited (PILL) were enjoined by this Court in 2006 from promoting foreign-based entities that encourage persons to violate the internal revenue laws. See United States v. Gauthier, No. 6:05-cv-01431-GKS-JGG (M.D. Fla.). The enjoined scheme involved "the sale and use of offshore credit or debit cards, foreign trusts, International Business Corporations, and private interest corporations." Id. Snipes' involvement with PIL/PILL in 1999 illustrates that he was involved with illegal tax avoidance schemes *before* he became involved with Kahn in 2000.

unincorporated Pure Trust Organization" about which Snipes wrote to his accountant in about June of 2000.[13] Ex. 68-5. So-called "pure trusts" are sham entities used for tax fraud. See, e.g., United States v. MacLean, 227 Fed. Appx. 844, 2007 WL 1593246 9 (11th Cir. 2007).

This purported conveyance of Snipes' main loan-out company was a sham. The so-called "Purchase Agreement" signed by defendant as seller purported to convey "'All' of Seller's inventory, including accounts receivable, royalties, works in progress and escrow funds," specifically including the accounts receivable for 11 movies (i.e., "Africa," "Blade," "Murder at 1600," "One Night Stand," "Rising Star," "Strays," "Sugar Hill," "The Art of War," "The Fan," "U.S. Marshals," and "Waiting to Exhale."). In fact, starting in September of 1999, months after this fake sale of his accounts receivable to a Swiss entity, defendant received a series of payments totaling $5 million from "The Art of War" into a domestic bank account in his name. Ex. 143-1. In 2001, defendant received a $425,000 payment for "The Art of War" into a domestic account he opened in the name of Farnborough Investments. Ex. 143-3. Tellingly, in 2002, when New Line Cinema attorney Craig Alexander expressed concern about honoring Snipes' request to

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[13] Snipes' use of "pure trusts" was a reflection of his having purchased, in 1999, no fewer than 14 so-called "pure trust" entities from an organization known as the Commonwealth Trust Company (CTC), including the entities named Amen Ra Films, Bushvine & Roots Holding Company, and Farnborough Investments. See Defendant Snipes' Motion for Reconsideration, Oct. 9, 2007, Doc. 224 at 13 (declaring with regard to CTC files seized by the government, "included in those files is an attorney opinion letter essential to Snipes' .. theory of defense"). The CTC operators were recently convicted of conspiracy to defraud the IRS with respect to their promotion of sham "pure trusts." United States v. Crim, No. 2:06-cr-658 (E.D. Pa.). CTC customers have also been convicted of tax fraud. See United States v. Anthony, 2:06-cr-00054-DBH-1 (D. Maine); United States v. Farnsworth, No. 2:04-cr-00707 (E.D. Pa.).

pay $1 million to Kymberlyte Production Services, which money New Line Cinema owed to Amen Ra Films, Snipes caused his bookkeeper, Carmen Baker, to execute a release of any claim to the $1 million on behalf of M&S Finance & Trust, S.A. Ex. 71-2. These facts show that Snipes, in fact, controlled the Swiss entity that supposedly purchased all of his business assets and income.

K. Summary

In sum, Snipes' wilful refusal to file income tax returns is far from a "garden variety" tax offense. Snipes' nearly decade-long campaign against the IRS has combined brazen tax defier tactics with sophisticated concealment of income and assets.[14] To place his campaign in context, Snipes has employed at least four of the "Dirty Dozen" tax scams publicized in a recent IRS announcement.[15]

III. Deterrence

A. General Deterrence - Respect For the law

This case presents the Court with a singular opportunity to deter tax fraud nationwide.[16] General deterrence is one of the prescribed goals of every sentencing,

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[14] As illustrated by the financial machinations described above, the PSR correctly reflects that defendant Snipes employed sophisticated means to conceal the extent of his willful failures to file returns by using foreign trusts to conceal income. U.S.S.G. § 2T1.1. See United States v. Barakat, 130 F.3d 1448, 1456-57 (11th Cir. 1997) (sophisticated means enhancement is warranted where, inter alia, the defendant conceals the extent of a tax offense on which he was convicted).

[15] See http://www.irs.gov/newsroom/article/0,,id=180075,00.html (#3 Frivolous Arguments; #5 Hiding Income Offshore; #8 False Claims for Refund; #11 Misuse of Trusts).

[16] 18 U.S.C. § 3553(a)(2)(A) & (B) provide that the sentence should "promote respect for the law" and "afford adequate deterrence to criminal conduct."

United States v. Pugh, 515 F.3d 1179,1194 (11th Cir. 2008), but it occupies an especially important role in sentencing for criminal tax offenses, because criminal tax prosecutions are relatively rare:

> The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.

U.S.S.G. ch 2, pt. T, introductory cmt. See also United States v. Burgos, 276 F.3d 1284, 1290 (11th Cir. 2001) (observing "[f]or a judge sentencing a defendant convicted of tax evasion, the chief concern may be general deterrence"). Indeed, this Court highlighted the role of general deterrence in criminal tax cases when it rejected Snipes' baseless claim of race-based selective prosecution:

> From a prosecutor's point of view, especially in tax cases, the primary objective in deciding whom to prosecute is to achieve general deterrence. Here, Defendant Snipes is admittedly a well known movie star, and a person of apparent wealth, whose prosecution has already attracted considerable publicity. By contrast, the Defendant Eddie Ray Kahn does not appear to share Defendant Snipe's notoriety. “Since the government lacks the means to investigate and prosecute every suspected violation of the tax laws, it makes good sense to prosecute those who will receive, or are likely to receive, the attention of the media." United States v. Catlett, 584 F.2d 864, 868 (8th Cir. 1978) (internal citations omitted); see also United States v. Hastings, 126 F.3d 310, 314 (4th Cir. 1997) (no selective prosecution in case against prominent businessman and Republican party leader charged with failure to file income tax returns).

United States v. Snipes, 2007 WL 2572198 (M.D. Fla. Sept. 5, 2007).

The instant prosecution has been described as the most prominent tax prosecution since the 1989 trial and conviction of billionaire hotelier Leona Helmsley.

See, e.g., David Cay Johnston, Wesley Snipes To Go To Trial In Tax Case, New York Times, Jan. 14, 2008, at C1, available at 2008 WLNR 734220. Accordingly, the trial attracted comprehensive media coverage. The parking lot next to the courthouse was filled with television satellite trucks, while a gallery of reporters was present each day in the courtroom itself. Clearly, "the attention of the media" cited by the Court in its Order of September 5, 2007, has come to pass. This case accordingly presents the Court with a momentous opportunity to instantaneously increase tax compliance on a national scale. Cf. United States v. Sherry Peel Jackson, No. 1:07-Cr-108-ODE (N.D. Ga. Feb. 14, 2008) (defendant, a former IRS agent known within tax defier circles but largely unknown to the general public, was convicted on four counts of failure to file returns, in violation of 26 U.S.C. § 7203, and sentenced to the statutory maximum of 48 months' imprisonment), appeal pending, No. 09-10651 (11th Cir.).

B. The Court Should Send a Message That Snipes Did Not "Beat the Rap"

The sentence imposed upon Snipes in this case is particularly crucial for additional reasons that correspond to the audience at issue. The fact that Snipes was acquitted on two felony charges and convicted "only" on three misdemeanor counts has been portrayed in the mainstream media as a "victory" for Snipes. For example, after the verdict, the headline in the New York Post (daily circulation of more than 700,000) trumpeted "Snipes Is Now Tax-Free, Beats Heavy Rap And Walks With Wrist $lap." David K. Li, New York Post, Feb. 2, 2008, at 7, available at 2008 WLNR 2108303.

The troubling implication of such coverage for the millions of average citizens who are aware of this case is that the rich and famous Wesley Snipes has "gotten away with it." In the end, the criminal conduct of Snipes must not be seen in such a light, or

else general deterrence -- “the effort to discourage similar wrongdoing by others through a reminder that the law's warnings are real and that the grim consequence of imprisonment is likely to follow” -- will not be achieved. United States v. Bergman, 416 F. Supp. 496, 499 (S.D.N.Y. 1976).

Perhaps even more troubling, is the fact that Snipes’ fellow tax defiers have been emboldened by his alleged “victory” in this case. By virtue of his fame and his high-profile campaign of tax defiance, Snipes has become the public face of a movement whose members seize upon the slimmest of threads to justify their obstructive tactics. Snipes’ acquittal on the tax conspiracy and false claim counts has been perceived in those circles as a vindication of anti-tax theories and a "win" that will attract additional converts into their movement. See, e.g., David Cay Johnston, Wesley Snipes Cleared of Serious Tax Charges, New York Times, Feb. 2, 2008, at C1, available at 2008 WLNR 1991246 ("The verdict drew whoops of joy outside the federal courthouse here from fellow tax deniers who immediately proclaimed it another victory that would draw more people to their cause."). There is, unfortunately, a profound need to discourage others from emulating Snipes' criminal tactics against the IRS.

General deterrence in this case depends upon the public seeing some consequence for Snipes beyond a vague promise to make amends with the IRS. See, e.g., Snipes Cleared of Tax Fraud; Convicted Of Not Filing Returns, Jet, Feb. 18, 2008, at 10, available at 2008 WLNR 3591834 ("'There was no intent to defraud anybody-he's not a fraudster, he's not a felon,' defense attorney Robert Barnes said. 'There's a couple of returns he should have filed. He'll be looking to make amends on anything he needs to make amends on.'"); Travis Reed, Actor Snipes Acquitted on Tax Charges,

Long Beach Press-Telegram, Feb. 2, 2008, at 8A, available at 2008 WLNR 2009115 (quoting defense attorney Robert Bernhoft's post-verdict claim regarding his client that "he'll make whatever amends are required.") Such talk is meaningless with reference to an inveterate tax defier who claimed after he was indicted that "the government may not lawfully enforce any provision of the Internal Revenue Code against me." Ex. 106. Rather, general deterrence is achieved only if Americans who do honestly file and pay their taxes are assured that tax scofflaws like Snipes will be imprisoned once convicted for their crimes.

The importance of imprisonment in tax cases was highlighted in United States v. Ture, where the Eighth Circuit vacated a non-prison sentence in a $250,000 tax evasion case because the district court "failed to consider the importance of a term of imprisonment to deter others from stealing from the national purse." 450 F.3d 352, 358 (8th Cir. 2006). Of course, the deterrent potential of the sentence imposed upon the relatively anonymous defendant in Ture pales by comparison with the Court's opportunity in this case. Even so, the admonition of the Court of Appeals in Ture applies: "the goal of deterrence rings hollow if a prison sentence is not imposed in this case." Id.

C. Specific Deterrence of Snipes From Further Crimes

Another important goal of criminal sentencing is protect the public "from further crimes of the defendant." 18 U.S.C. 3553(a)(2). No efforts by the government to date have deterred Snipes from carrying on his campaign of tax defiance. However, Snipes has not yet been sent to prison. A substantial term of imprisonment will serve to deter

Snipes from persisting with his campaign against the IRS and his complete failure for many years to meet his tax obligations.

As detailed in the preceding sections, Snipes was far from an innocent victim of bad tax advice. He intentionally violated a known legal duty to file tax returns, as the jury correctly found beyond a reasonable doubt. Snipes persisted in his anti-tax campaign despite repeated warnings that his course of conduct was wrong. As described above, Snipes' accountant, Michael Canter, warned him in 2000 that he had to file returns and report foreign holdings. If that warning was not sufficient, attorney Kenneth Starr, owner of Starr & Company and Snipes' long-time advisor, personally warned him that the tax defier nonsense peddled by Eddie Kahn was "ridiculous." 1/17/08 Trans. at 145, 148-50. In his June 29, 2000 letter dismissing Snipes as a client, Kenneth Starr expressly warned Snipes that "the positions you are taking both on your tax planning and investments are contrary to our advice." Ex. 69.

The IRS itself gave the defendant plenty of warning that what he was doing was wrong. In 2000 and 2001, the IRS sent Snipes letters asking for tax returns and warning him that the documents he had submitted were frivolous. Ex. 87-6; 87-15; 87-19; 87-25; 87-26. Moreover, in May of 2002, Snipes was personally warned by IRS Criminal Investigation Special Agents that he was under criminal investigation for tax fraud. Snipes told the agents that he found this warning "very interesting," but remained undeterred. Snipes still failed to file any tax returns, kept concealing assets and income, and continued to inundate the IRS with frivolous correspondence. Most brazenly, in December of 2006, *after being indicted*, Snipes sent a manifesto to government employees, including one of the prosecutors in this case, threatening that

"[p]ursuit of such a high profile target will open the door to your increased collateral risk." Ex. 106.

In sum, neither warnings, nor even an indictment, have been sufficient to deter Snipes from his campaign of tax defiance. Accordingly, a substantial term of imprisonment is needed to impress upon Snipes the unlawfulness of his conduct.

IV. Other Sentencing Factors

A. Substantial Imprisonment of Snipes Will Avoid Sentencing Disparity

Title 18, U.S.C. § 3553(a)(6), provides that one of the factors to be considered in sentencing is "the need to avoid unwarranted sentence disparity among defendants with similar records who have been found guilty of similar conduct." To avoid unwarranted disparity in sentencing, Snipes should be sentenced to a three-year term of imprisonment. When the sentencing guidelines were promulgated, the goals included reducing the sentencing disparity between tax offenders and reducing the number of probationary sentences.[17] The introduction of the Tax Table at U.S.S.G. § 2T4.1 has helped to achieve this goal by placing defendants with the same tax loss at the same

[17] The sections of the guidelines applicable to tax offenses were "intended to reduce disparity in sentencing for tax offenses[,] ... to somewhat increase average sentence length," and to reduce "the number of purely probationary sentences." U.S.S.G. § 2T1.1, cmt. background. On this point, the United States acknowledges that the guidelines are now discretionary. However, the guidelines, which remain an independent sentencing factor, also promote the goal of avoiding unwarranted sentencing disparities. Cf. United States v. Willingham, 497 F.3d 541, 544 (5th Cir. 2007) ("[n]ational averages of sentences that provide no details underlying the sentences are unreliable to determine unwarranted disparity because they do not reflect the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases."). For reasons similar to those expressed in Willingham, the proper sentence to be imposed on Snipes also can not be divined by comparing the sentences imposed on other defendants who, though also prominent public figures, are not situated similarly to Snipes.

initial offense level prior to any adjustments.[18] See United States v. Cutler, 2008 WL 706633 (2d Cir. Mar. 17, 2008) (the need for deterrence, and for imprison-ment, increases as the tax loss increases, citing U.S.S.G. § 2T1.1 (background)).

The actual and intended tax loss in this case is enormous. The PSR places that amount at more $40 million. Even if one considers solely the actual tax loss associated with the counts of conviction, and excludes both the actual and intended loss from relevant conduct, the tax loss for which Snipes is responsible, solely by virtue of the jury's verdict on the three counts of conviction, is several million dollars. Even without consideration of any guidelines enhancements, a tax loss between $2.7 and $7 million renders an offense level of 24, which corresponds to a discretionary guidelines range of 51 - 63 months. U.S.S.G. § 2T4.1(J). The statutory maximum for a conviction under 26 U.S.C. § 7203 is twelve months, which means that the statutory maximum for Snipes' three counts of conviction is 36 months. 26 U.S.C. § 7203. There is no reasonable scenario under which the tax loss could be reduced to the point where a term of less than 36 months' imprisonment would be indicated. Indeed, the guidelines range attributable to the 1999 tax loss of more than $2 million alone exceeds the 36-month statutory maximum.

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[18] The fact that Snipes' effective guidelines range was cut by two-thirds, due to the statutory maximum, makes moot any potential argument that the guidelines overstate the seriousness of misdemeanor tax offenses as compared to tax felonies. Cf. United States v. Hall, 515 F.3d 196 (3d Cir. 2008) (affirmed the sentence after rejecting the defendant's argument that his within-guidelines sentence was unreasonable because the guidelines "evaluate tax felonies with an element of fraud exactly the same as they do tax misdemeanors which involve no more than a willful neglect of a known statutory filing duty").

From another point of view, a term of 36 months' imprisonment is in the middle of the range for an offense level of 20 (33 - 41 months) which range corresponds to a tax loss between $400,000 and $1,000,000. U.S.S.G. § 2T4.1(H). Thus, due to the statutory cap, Snipes cannot be sentenced more severely than a defendant whose tax loss was between $400,000 and $1,000,000. The sentencing disparity resulting from the inability to lengthen the term of Snipes' imprisonment to a point that it is comparable to other defendants with such large tax losses cannot be avoided. However, that disparity can and should be minimized by the imposition of the statutory maximum term of imprisonment, plus a substantial fine.

B. Leniency Would Result in Unwarranted Sentencing Disparity

The last valid tax return filed by Snipes was for tax year 1998. It is now 2008. He has not filed tax returns for nearly a decade. Even if Snipes were to file his delinquent returns and pay his tax debt prior to sentencing, such post-conviction acts should not affect the conclusion that, to effectuate the purposes of sentencing, Snipes should be sentenced to 36 months' imprisonment. Granting Snipes leniency as a result of his financial wherewithal to pay the tax would reinforce the perception that wealthy and famous defendants can buy their way out of a prison sentence, and would promote unwarranted disparity based upon socio-economic status. See United States v. Harpst, 949 F.2d 860, 863 (6th Cir. 1991); United States v. Seacott, 15 F.3d 1380, 1389 (7th Cir. 1994).

To the extent there is a claim that Snipes was misled by others, and that he has belatedly -- i.e., post-conviction, pre-sentencing -- gained the "wisdom" demonstrated by millions of Americans each year during tax season, it should be viewed with extreme

skepticism, and rejected as a basis for leniency in any event. First, any claim that Snipes was misled by others is inconsistent with the jury's finding that Snipes knowingly and intentionally refused to file returns. Second, any post-conviction filing and payment would not constitute cooperation or acceptance of responsibility worthy of a non-prison sentence, as Snipes already has the obligation to belatedly file accurate returns and pay the tax due.[19]

Neither should Snipes avoid substantial imprisonment based upon a possible claim that imprisonment would impede his ability to pay the tax debt. First, such an impediment is common to most defendants and thus is not an atypical factor warranting leniency. Second, such a result would clearly be bad policy. If prison sentences decreased as the amount of tax loss rose, the lesson would then be that the more you cheat, the more lenient your sentence. The opposite, however, should be true. See Ture, 450 F.3d at 359. Third, elevating the goal of collecting Snipes' tax debt at the

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[19] Contrary to the defendant's assertion in his PSR objections, Snipes' pre-trial plea offers did not demonstrate acceptance of responsibility for the three failure to file counts on which he was convicted at trial. The August 24, 2007 offer submitted by attorneys Martin and Meachum merely stated that Snipes would agree to enter into a sealed Alford plea to one count of failure to file, with the sentence being public service announcements warning others not to become "victims" of tax scam artists. The January 10, 2008 offer submitted by attorneys Bernhoft and Barnes merely stated that they would recommend to Snipes that he plead guilty to one count of failure to file, in exchange for a joint recommendation of probation and a stay of the sentence pending an appeal on venue. Neither of those offers is within the purview of the commentary to U.S.S.G. § 3E1.1 (which states that a defendant is not barred from receiving a two-level reduction in the offense level if he goes to trial to assert and preserve issues that do not relate to his factual guilt on the offenses for which he is convicted). Snipes' pretrial statements and conduct also belie any claim of acceptance of responsibility. See United States v. Davis, 175 Fed. Appx. 286 (11th Cir. 2006) (the defendant's pre-trial statements and conduct are relevant). At all events, Snipes did, in fact, contest his factual guilt at trial as to the counts of conviction.

expense of imprisonment is inconsistent with the fact that the United States, which was the victim of defendant's crimes and would be the recipient of any tax payment, elected to prosecute this matter as a criminal case, not a civil case. Finally, given Snipes' wealth, his recent completion of the filming of several movies, and his numerous off-shore transfers of money, any claim that he could not make substantial payments toward his tax liability should be viewed with skepticism.

Granting leniency to Snipes also would create an unwarranted disparity with other ARL clients who are being criminally prosecuted, as the amount of tax loss intended by Snipes, who was ARL's largest client, was multiples of the tax loss of any other ARL client. See, e.g., United States v. Richard Corona, et al., No. 04-1248 (S.D. Cal.) (ARL clients sentenced to 33 months' imprisonment and ordered to pay $870,000 restitution to the IRS); United States v. Walford, No. 6:07-cr-00045-PCF-UAM-1 (M.D. Fla.) (ARL client sentenced to 33 months in prison and ordered to pay $272,000 in restitution to the IRS); United States v. Oertwig, No. 0:03CR20265 (S.D. Fla.) (ARL client sentenced to 41 months in prison and ordered to pay $50,000 fine); United States v. O'Donnell, No. 7:02-cr-00411-CM-1 (S.D.N.Y.) (ARL client sentenced to 37 months in prison and ordered to pay $25,000 fine).

Finally, based on the evidence introduced at trial, a sentence of 3 years imprisonment and a fine of at least $5 million would reflect Snipes' culpability relative to his co-defendants, Kahn (who faces a guidelines term of imprisonment of 10 years) and Rosile (who faces a guidelines term of imprisonment of approximately 7 years).

C. Availability of Alternative Sentences

There is, perhaps, one point on which both parties can agree: that the sentence imposed on Snipes, who is a prominent public figure, could promote the public good. The United States submits that the public good would be best served by the imposition of a substantial prison sentence, as such a sentence could instantaneously improve tax compliance on a national scale. The defense likely will urge the Court to impose public or community service as an alternative to a prison sentence. However, any request for leniency based upon Snipes' offering to perform public or community service in lieu of imprisonment (such as, for example, "speaking to teenagers about the value of hard work and education" or contributing to a nonprofit "which educates teenage males about teenage pregnancy") should be rejected. See Glenn Henderson, Snipes' Debt To Society Still Unpaid After Motorcycle Ride on I-95, Palm Beach Post, Jan. 24, 1995, at 1B, available at 1995 WLNR 1533663.[20] Snipes repeatedly acted on his strong anti-tax views, even after he was indicted. Snipes is no role model, and public or community service would be a particularly inappropriate basis upon which to grant leniency to him. Whatever benefit might be derived from such an alternative sentence would be more than offset by the harm to tax administration caused by the public perception that Snipes had gotten off with a slap on the wrist because of his celebrity.

[20] In 1994, Snipes was operating a motorcycle on the Florida Turnpike at an estimated speed of 120 miles per hour when he passed a marked Florida Highway Patrol vehicle. Following a pursuit of approximately 30 miles, Snipes attempted to exit the Turnpike, where he lost control of the motorcycle and crashed. After pleading guilty to reckless driving, Snipes was fined and ordered to perform 80 hours of community service. (PSR ¶ 87.)

D. Absence of Factors Warranting Leniency

Snipes' family ties and responsibilities do not warrant leniency. Snipes' imprisonment certainly will not result in his family's impoverishment and there is no basis from which to conclude that Snipes' imprisonment would negatively affect his family more than is typical in criminal cases. Indeed, given that Snipes' profession as a movie actor already results in extended absences from his family, it is likely that any negative effect on his family would be less than is typical. Further, Snipes' conviction has not negated his ability in the future to earn a living as an actor, and he will undoubtedly continue to receive significant income while in prison from royalties, residuals, and investments. Thus, he will be much better off financially than most defendants convicted of such crimes.

The fact that Snipes started from humble beginnings to become a successful movie actor also does not warrant leniency. To the extent that Snipes' background is even a mitigating factor, it is offset by his nearly decade-long effort to escape paying taxes on the lucrative compensation he received as result of that professional success. To the extent that Snipes has, in the past, performed charity and good works, such actions should be viewed in the context of what is typical and expected of individuals who have reached defendant's station in life.

Snipes is not deserving of leniency based upon an argument that he has "suffered enough" simply from having been convicted. Indeed, it is not obvious that the convictions have even diminished Snipes' reputation in the business and social circles of which he is a part. See, e.g., Duane Dudek, Bright Night, Dark Oscar Winners 'No Country for Old Men' Wins Best Picture, Director, Milwaukee Journal Sentinel, Feb. 25,

2008, at 1, available at 2008 WLNR 3680955 (describing 2008 Academy Awards ceremony and noting that “Spike Lee and Wesley Snipes smiled from the audience”).

Snipes also has not publicly exhibited genuine remorse, much less the type of genuine remorse that might warrant leniency. See, e.g., David K. Li, Snipes Is Now Tax-Free, Beats Heavy Rap And Walks With Wrist $lap, New York Post, Feb. 2, 2008, at 7, available at 2008 WLNR 2108303 (“’It does feel good, it feels great,’ a joyful, unrepentant Snipes said outside court. ‘My mamma would be very happy . . . . No fraud, baby!’”).

Finally, contrary to the defendant’s assertion in his PSR objections, there is no basis for concluding that Snipes should receive a non-prison sentence because he would be susceptible to abuse in prison as a result of his celebrity. The Bureau of Prisons has protected the security of prisoners of greater notoriety than Snipes, and certainly can protect Snipes. Indeed, it seems more likely that his celebrity will make his time in prison easier than most convicts.

E. "Sufficient, But Not Greater Than Necessary"

Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing. Application of the phrase "sufficient, but not greater than necessary" to a particular defendant's situation does not produce one single "correct" term of imprisonment, nor mandate a rule that a defendant should be sentenced at the bottom of a calculated range. That conclusion follows from the interdependence of a district courts' obligation to impose a sentence that is "sufficient, but not greater than necessary," and an appellate court's obligation to review sentences for reasonableness. Just as "reasonableness" is a range, not a single

point, United States v. Cunningham, 429 F.3d 673, 679 (7th Cir. 2005), so is a sentence that is "sufficient, but not greater than necessary." For the reasons set forth above, a sentence of 36 months' imprisonment and a fine of $5 million is by no means "greater than necessary" to achieve the purposes of sentencing as to defendant Snipes.

V. Imposition of a Fine

The maximum statutory fine, pursuant to 18 U.S.C. § 3571(d), is twice the amount of the tax loss resulting from the defendant's offenses.[21] Because the tax loss for Snipes' counts of conviction is $7,168,550, the maximum statutory fine is $14,337,100. The United States respectfully submits that Snipes should be fined at least $5 million. See 18 U.S.C. § 3572 (listing factors for determining the amount of an appropriate fine).

Snipes has the means and wherewithal to pay both his civil tax obligations and a substantial criminal fine. The fact that Snipes remains liable for his civil tax obligations does not reduce the appropriateness of a substantial criminal fine. The two are distinct and have different purposes. See United States v. Rosin, 2008 WL 142037, No. 06-15538 (11th Cir. Jan. 16, 2008) (Because the goal of restitution is to compensate victims for their losses, while the goal of forfeiture is to punish, the fact that "[t]hat a

[21] Title 26 U.S.C. § 7203 states that "[a]ny person" who violates the statute is "guilty of a misdemeanor" and shall be fined not more than $25,000." Pursuant to 18 U.S.C. § 3571, however, an individual who has been found guilty of a Class A misdemeanor may be fined "not more than the greatest of" the amount specified in the law setting forth the offense ($100,000) or twice the gross gain or loss. See 18 U.S.C. §§ 3571(b), (d). Offenses under 26 U.S.C. § 7203 are subject to the higher fines allowed by 18 U.S.C. § 3571. See United States v. Looney, 152 Fed. Appx. 849 (11th Cir. 2005).

defendant may ultimately be ordered to pay in restitution and forfeiture more than he took is of little consequence").

Moreover, with respect to Title 26 offenses, restitution cannot be imposed as a direct part of the sentence; restitution with respect to Title 26 offenses can only be ordered as a condition of supervised release. Although the IRS may eventually collect on Snipes' tax debt, civil tax collection sometime in the future will not promote deterrence in this criminal case now. Therefore, the United States urges the court to impose a fine of at least $5 million.

Such a fine would constitute an upward departure from the $15,500 - $175,000 discretionary range calculated under U.S.S.G. § 5E.1.2. However, the Sentencing Commission anticipated that the upper end of the fine guideline range would be at least twice the amount of loss resulting from the offense and stated that, where it is not, an upward departure from the fine guideline may be warranted. U.S.S.G. § 5E1.2, Note 4. The government respectfully submits that an upward departure is warranted here.

Section 3572(a)(1) provides that one of the factors to be considered in determining the amount of the fine is "the defendant's income, earning capacity, and financial resources." 18 U.S.C. § 3572(a)(1). On this point, we note that the Financial Statement submitted by defendant to the Probation Officer omitted the defendant’s $8 million residence in Alpine, New Jersey, which residence was memorably referred to during the trial as the "Ponderosa." Ex. 29; 70-1 to 70-3; 1/18/08 Trans. at 29-45. In addition, although the evidence at trial demonstrated that Snipes transferred millions of dollars abroad, the defendant has not identified a single offshore asset. Further, Snipes reports having only $8,824 in a checking account and $500 in cash, despite the fact that

his reported net monthly cash flow is $165,273. Despite these irregularities, the defendant's disclosed assets exceed $25 million and his net monthly cash flow is reported to be $165,273. Thus, defendant Snipes clearly has the means to pay a substantial fine.

Because the statutes of conviction limit the prison term the court can impose on Snipes to far less than his actual criminal conduct would otherwise warrant, a substantial fine is appropriate to provide an adequate deterrence and punishment. Given defendant's income, earning capacity, and financial resources, both disclosed and undisclosed, the United States submits that a fine of at least $5 million is warranted.

VI. Denial of Release Pending Anticipated Appeal

The United States respectfully submits that Snipes should be denied release pending his anticipated appeal because he cannot raise a substantial question that would result in a reversal of his convictions. See 18 U.S.C. § 3143(b)(1). An appeal by Snipes would not raise a substantial question of law or fact with respect to the three failure to file counts of which he was convicted. There is, for example, no substantial basis upon which Snipes could mount a challenge to the sufficiency of the evidence on the elements of these counts. Overwhelming evidence proved that Snipes had sufficient income to require him to file returns and that he willfully failed to file those returns. Although Snipes contested venue for the § 7203 counts pre-trial and during the government's case-in-chief, that issue is now largely waived, because the Rule 29 motion he filed (Doc. 389), which was specific as to other issues, did not challenge the sufficiency of the government's proof as to venue. See United States v. Herrera, 313 F.3d 882, 884-85 (5th Cir. 2002) (en banc). Because Snipes' counsel affirmatively

agreed to the jury instruction on venue (1/28/08 Trans. at 55), defendant also waived any challenge to that instruction. See United States v. Silvestri, 409 F.3d 1311, 1337 (11th Cir. 2005). Snipes' severance motion is also largely moot, as Kahn absented himself from the trial. In sum, Snipes cannot mount a substantial challenge to his counts of conviction and he should be incarcerated pending his expected appeal.

VII. Conclusion

Criminal tax prosecutions play a vital role in our nation's tax system because our system of self-reported tax liability depends upon citizens' being assured that those who do not honestly report their income and pay their taxes will be appropriately punished. In the defendant Wesley Snipes, the Court is presented with a wealthy, famous, and inveterate tax scofflaw. If ever a tax offender was deserving of being held accountable to the maximum extent for his criminal wrongdoing, Snipes is that defendant.

WHEREFORE, the United States respectfully urges the Court to punish defendant Snipes to the fullest extent permitted under the law.

Respectfully submitted,

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U.S. v. SNIPES **Case No. 5:06-cr-22(S1)-Oc-10GRJ**

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participant(s):

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I hereby certify that on April 14, 2008, a true and correct copy of the foregoing will be mailed to the following non-CM/ECF participant(s):

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