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DIRECT DIAL NO.

March 9, 1993

Mr. Michael Corlander
Public Information Specialist
United States Sentencing Commission
1 Columbus Circle, NE, Suite 2-500 South Lobby
Washington, DC 20002-8002

**RE: Comment to Proposed Sentencing Guideline Amendments/
Tax Provisions**

Dear Mr. Corlander:

This letter is written in response to the Commission's solicitation for public comment regarding proposed amendments to the United States Sentencing Guidelines.

Our practice primarily consists of criminal and civil tax litigation. We would like to comment on the proposal to redefine tax loss and specifically the provision which would provide for a "rebuttable presumption" that the tax loss will be equal to the specified percentage (i.e., 28% or 34%) of unreported gross income or improperly claimed deductions.

We believe the proposal is a good change and should be favorably considered by the Commission. Under the existing guidelines, tax loss is generally determined merely by applying the specified percentage (e.g., 28%) against the omitted items of gross income. Legitimate deductions which were not claimed on the return may not be taken into account. Accordingly, under the guidelines, there may be situations where there is little or no criminal tax deficiency, but a very large "tax loss."

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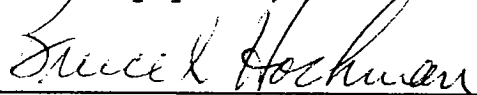
For example, assume a taxpayer omitted income of \$200,000 from his or her return with the intent to evade the tax on such income. Also assume that the taxpayer had other deductions of \$100,000 which were not claimed on the return. Under the existing guidelines, the tax loss is 28% of the \$200,000, or \$56,000. The actual deficiency, assuming a 28% bracket, would be approximately one-half that amount, or \$28,000.

Since the underlying premise of the guidelines is to sentence based upon tax loss, it seems appropriate to attempt to determine, within practical limitations, what the tax loss is. An individual who has evaded \$56,000 of tax should be sentenced differently than an individual who evaded \$28,000 of tax.

We believe the "rebuttable presumption" approach contained in the proposal strikes the proper balance. Once the Government has demonstrated the omission of gross income, the tax defendant has the obligation to come forward with evidence showing a reduction in the tax deficiency. While it is true that allowing consideration of offsetting deductions complicates the determination of tax loss, it is a complication which is nevertheless required to be addressed by the Internal Revenue Service for civil tax purposes and should be addressed in determining the appropriate sentence under the guidelines.

We would appreciate your placing this comment in the public record of the Commission's proceedings.

Sincerely yours,



BRUCE I. HOCHMAN



STEVEN TOSCHER

ST/jmr

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SOUTHERN DISTRICT OF OHIO
PROBATION OFFICE

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AND COURT HOUSE
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CINCINNATI 45202-3980

DATE: February 16, 1993
RE: Amendment #21. Additional Issue for Comment.
FROM: David E. Miller, Deputy Chief
U. S. Probation Officer
TO: U. S. Sentencing Commission
Public Information

* The Commission invites comment on whether the tax table should be amended to offset the potential impact of other amendments that increased the potential for sentences of probation for low level tax offenders.

I do not think tax offenders should be treated differently than other property offenders and the Court should have available the same sentencing options for these similar offenders.