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The Honorable William W. Wilkins, Jr.
Chairman, United States Sentencing Commission
1 Columbus, N.E.
Suite 2500, South Lobby
Washington, D.C. 2002-8002

Dear Judge Wilkins:

Pursuant to our recent conversation concerning the 1994 proposed amendments to the Sentencing Guidelines, specifically proposed Amendment 12(C), the following information concerning the Internal Revenue Service's position thereto is provided for your consideration. As a result of our conversation, it is my understanding that you concur with our opposition to Amendment 12(C) and, accordingly, feel it will be unnecessary for the Service to provide oral testimony at the Commission's scheduled hearing. Therefore, this written submission is in lieu of our giving oral testimony.

I would like to extend my appreciation to the Commission and its Staff for its previous support provided to the Internal Revenue Service in fostering voluntary compliance with our Nation's tax laws. Last year, when concerns were raised regarding the disproportionate relationship between the Tax Table and the Sentencing Table, the IRS and the Tax Division, Department of Justice worked closely with you and your Staff to help resolve the problem. In addition, we were able to consolidate several existing tax guidelines thereby creating a clearer definition of "tax loss," and ensuring that the guidelines applicable to tax offenses could be more easily understood and applied.

As I stated in my testimony last year, the Internal Revenue Service is involved in a new program designed to help us with the problems of non-compliance, called Compliance 2000. Although Compliance 2000 includes assistance and outreach efforts to taxpayers, some segments of the population will still fail to voluntarily comply with the tax laws. Accordingly, our compliance efforts still depend on the effectiveness of our tax law enforcement efforts. By effectively identifying and dealing with the segment of intentional non-compliance that justifies criminal prosecution, we send a strong message to every American that there are serious consequences for failing to voluntarily comply with the tax laws of our Nation.

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As a result of the 1993 amendments to Part T of Chapter 2 of the Federal Sentencing Guidelines, the Tax Table's proportionate relationship to the Sentencing Table is expected to ensure that sentences rendered in regard to tax offense convictions will include some type of confinement, which is necessary to achieve general deterrence and essential to effective and efficient tax administration. It is because of the significant tax administration accomplishments of the 1993 Amendments to Part T of Chapter 2 of the Federal Sentencing Guidelines, that we are particularly concerned about and opposed to proposed Amendment 12(C) as it pertains to the Tax Table. Since the Sentencing Table and the Tax Table were most recently amended in November of 1992 and 1993, respectively, we believe that further changes will only serve to complicate the sentencing process as prosecutors, the defense bar, probation officers and judges struggle to determine which of the several Tax Tables apply to a particular offense. We strongly urge the Commission to apply judicious restraint in amending the Sentencing Guidelines and agree with the Commission that frequent amendment of the Sentencing Guidelines only makes their application increasingly more difficult. The IRS readily agreed that last year's changes would be the last advocated for several years, thus providing a consistent framework upon which their effectiveness could be determined.

Beyond my general conviction that no amendment should be made to the Tax Table, I am of the opinion that there is no justification to support the adoption of either Option proposed by Amendment 12(C). Although both Options provide for a more uniform slope throughout the range of tax losses in the Tax Tables, there is no evidence that a more uniform slope is desirable in the Tax Table or that the present slope reflects such an unfair distinction between convicted tax violators so as to justify an amendment, especially so soon after the most recent amendment cycle. In fact, proposed Amendment 12(C) seems to be contrary to the position shared by the Commission and the IRS, that tax crimes are serious matters.

The current Tax Table provides for a Zone B sentence of confinement for at least one month for tax offenders with a tax loss of at least \$13,501, even with a two-level reduction for acceptance of responsibility. Under Options 1 and 2 of proposed Amendment 12(C), these threshold amounts are increased to at least \$15,001 and at least \$25,001 respectively. These significant modifications, especially in Option 2, would clearly place these threshold Tax Table amounts and corresponding offense levels beyond the amounts of

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tax due on the majority of returns filed by taxpayers each year. As a matter of fact, based on the 28% rate utilized in the Guidelines, taxpayer who accept responsibility for their actions can already evade the payment of tax on \$48,214 in additional net income without being sure of receiving some period of confinement. If Option 1 were adopted, the figure would jump to \$53,571 of additional unreported income and up to \$89,285 of additional net income under Option 2. Increasing the level allowed for unreported income by over \$5,000 as suggested in Option 1 or by \$41,000 as suggested by Option 2 would be contrary to the Commission's intent to treat tax crimes as serious offenses and could seriously impair the Service's efforts to effectively address the issue of wide-spread non-compliance.

Proponents of proposed Amendment 12(C), suggest that the two-level incremental increases as provided by Option 2, would reduce the number of contests concerning tax loss computations because there would be fewer points at which an increased or decreased tax loss will change the offense level. Since, after conviction, the defendant's objective will still be to avoid confinement, we believe that the two-level incremental increases would have little or no effect on the number of tax loss contests and might increase the intensity at which the challenged ones are contested. We are also am unconvinced that the single increments of the Tax Table create an appearance of complexity, especially when compared with the voluminousness of the Drug Table. We do not believe that the current Tax Table should be converted to two-level increments simply because the Drug and Alien Tables incorporate that type of progression. Consequently, we believe that no changes to the Tax Table should be made.

Another area of the proposals published by the Sentencing Commission which cause me concern is the area relating to money laundering. This is important to the internal Revenue Service because a number of taxpayers involved in a plethora of illegal activities are investigated by special agents of our Criminal Investigation Division relative to their failure to correctly report the income derived from their illegal endeavors. In addition to gathering evidence pertaining to tax evasion, our investigators frequently develop evidence of money laundering as the defendants attempt to hide or conceal their ill gotten gains. I realize there has been substantial dialogue between your Staff and the Department of Justice and that the Department of Justice is the appropriate spokesperson

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for the government in the money laundering arena, but I feel it is important for you to know that the Internal Revenue Service is indeed very concerned about Proposal 11.

If there appears to be any significant disagreement among the members of the Sentencing Commission concerning our opposition to Amendment 12(C), we would be pleased to provide additional information or, in the alternative, formally present oral testimony.

Sincerely,

Michael P. Dolan
Deputy Commissioner

cc: The Honorable Julie E. Carnes
The Honorable Michael S. Gelacak
The Honorable A. David Mazzone
The Honorable Ilene H. Nagel

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