

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 11-00224-02-CR-W-DW
)	
KRISTEN SIMONSON,)	
)	
Defendant.)	

GOVERNMENT’S SENTENCING MEMORANDUM

I. INTRODUCTION

Defendant Kristen Simonson will appear for sentencing in this criminal action on June 17, 2013, along with her co-defendant husband, Joshua Simonson. Kristen Simonson was convicted on all five counts of violating 18 U.S.C. § 286, conspiracy to Defraud the United States (one count); 18 U.S.C. § 287 Filing False Claims for Tax Refunds (two counts); and 18 U.S.C. § 1341 Mail Fraud (two counts). Her Guidelines sentencing range is 57-71 months. The government believes that a prison sentence of 71 months achieves the goals set forth in 18 U.S.C. § 3553.

II. SENTENCING RECOMMENDATIONS

A. Recommended Sentence of Imprisonment

The below factors listed in 18 U.S.C. § 3553 should be taken into account when fashioning Kristen Simonson’s sentence.

1. The Nature and Circumstances of the Offense

Though her defense at trial was to hide behind her husband, Kristen Simonson fully participated in her crimes of conviction. In questioning her husband, eliciting his perjured testimony, and through her closing argument, she falsely portrayed Joshua as the criminal decision-maker and herself as a meek follower. She tried to persuade the jury that she did not think anything was wrong with her actions – she was simply naïve – and she unconditionally trusted her husband to “make all financial decisions.” With its verdict, the jury flatly rejected this attempt to transfer her blame to her husband. Through her sentencing memorandum, she now attempts to revive this rejected blame-shifting argument.

After the Simonsons’ home was foreclosed, with no significant employment, Kristen Simonson signed false tax returns claiming the government owed her hundreds of thousands of dollars for over withholding of her taxes. She did this after being repeatedly warned by her sister-in-law that people were going to jail for making such OID filings. (PSR ¶ 23, 24).¹ In addition to the conduct underlying her counts of conviction, Kristen Simonson’s relevant conduct further demonstrates her deep involvement in the scheme.

Although she was not charged with money laundering, trial proof established that Kristen Simonson laundered and spent the proceeds, beginning within days of receiving huge checks

¹ Joshua Simonson also admitted on cross examination and reiterated in closing that prior to filing the returns, he attempted to verify the OID process through visiting H&R Block and Jackson Hewitt, and they did not know anything about it. Tr. Trans. p. 497; 541. He admitted that only one of ten Kansas City CPA firms that he contacted knew anything about 1099-OIDs. *Id.* Trial evidence also showed that his email account received numerous warnings indicating the illegality of filing 1099-OID refunds. *See* S.A. Phillip Nicotra and S.A. Kenneth Klingenberg testimony.

from the U.S. Treasury in November 2008.² Kristen Simonson joined her husband in opening multiple bank accounts at UMB to launder their proceeds through.³ A federal search warrant was executed at the tax return preparer Teresa Marty's residence on January 21, 2009. Through letters sent January 26, 2009, and again on March 5, 2009, the IRS notified both Simonsons of its intent to recollect the tax refunds. The IRS continued to follow up with the Simonsons throughout that year and the next year on multiple occasions. Despite these multiple notices, the Simonsons continued to launder and spend the money, and did not pay the proceeds back to the IRS.

Although Kristen Simonson was not charged with 18 U.S.C. § 514 (fictitious obligations), in February 2010, she admitted to agents that she was aware when Joshua Simonson sent the million dollar check into the IRS for her tax debts.

² See Tr. Trans. p. 334, describing how Kristen's \$582,000 check was initially divided up between three accounts. On one of the accounts, Kristen Simonson was the only signatory.

³ See Tr. Trans. p. 350, testimony describing how Kristen and Joshua Simonson went to open three UMB accounts within a week of receiving Kristen's \$582,000 tax refund on November 21, 2008. Kristen Simonson was a signatory on two of these accounts, and one was solely in her name. Two weeks later the \$500,000 was transferred into a fourth account, a Bank of America time deposit account (CD) in the name of Hohokum Home Investments LLC with Joshua Simonson as the signatory. The time deposit was created on December 5, 2008. \$250,000 of the money transferred came from the account solely in Kristen Simonson's name. A check written from the UMB account used to transfer \$250,000 from Kristen Simonson's account contained her signature. The funds were left in the time deposit account until a fifth account, a checking account at Bank of America, was established on March 12, 2009, in the name of Hohokum Home Investments LLC. The checking account listed Joshua Simonson as the signatory. Transfers from the time deposit account to the Hohokum Investments LLC checking account totaled \$425,274.96. \$417,000 was transferred on the day the checking account was opened on March 12, 2009, and an additional \$8,274.96 was transferred on April 20, 2009. On March 13, 2009, the day after the transfer of \$417,000, \$400,000 was transferred to purchase silver from Gladius Investments. An additional account, established on October 23, 2009, at Bank of America, received wire transfers from Gladius Investments. The account was a trust account with Joshua Simonson as the signatory for the account.

Contrary to the assertions in her sentencing memorandum, Kristen Simonson knowingly rejected all responsibility when she rejected repeated plea offers prior to trial.⁴ She acted with confidence in her criminal acts up until the day the jury came back with guilty verdicts on all counts. Now that Kristen Simonson has been convicted, she purports to have extreme remorse and extreme concern for her children. Kristen Simonson's behavior is all too predictable, and surely it comes as no surprise to this Court.

The criminal acts of Kristen Simonson did not occur in a single day. Rather her criminal acts continued over a protracted period of time. She had 17 months to reflect on what she was doing between her various criminal acts. Nothing could influence her to abandon her fraudulent scheme. Neither concern for her children, nor concern of going to prison could deter her actions. Only now after being convicted do these factors become a priority. The following serves as a reminder of the 17 month time-span of Kristen Simonson's most significant criminal acts:

Summer 2008	K. Simonson was repeatedly warned by her sister-in-law that OID filings are criminal with serious penalties;
September 2008	K. Simonson signs fraudulent tax returns mailed to the IRS;
November 2008	K. Simonson receives the criminal proceeds from the IRS;
January 21, 2009	K. Simonson begins spending criminal proceeds (\$50,000 SUV); Search warrant executed at Teresa Marty's residence;

⁴ Contrary to her sentencing memo, Kristen Simonson was warned before trial, on multiple occasions, that she would not receive acceptance of responsibility points if she proceeded to trial and was convicted. Through letters and emails sent via counsel, and at a meeting at the USAO, it was explained to Kristen how leniency would diminish the closer she got to trial, and that the government would likely oppose the third acceptance point if she waited until the eleventh hour to plead guilty. It was explained that her punishment if she pleaded guilty would be "significantly lower than her sentencing range ... if she were convicted at trial." A week before trial, in a November 29, 2012 letter, Kristen Simonson was again warned that her Guidelines range would be approximately 13 months higher if she did not plead guilty and accept responsibility.

January 26, 2009	IRS sends K. Simonson letter that she has to repay money; ⁵
January 2009	K. Simonson does not make any attempt to repay the IRS;
March 5, 2009	IRS sends K. Simonson second letter that she has to repay money;
2009 and 2010	Spending and transferring of proceeds continues; and
February 2010	K. Simonson aware that fake million dollar check is sent to the IRS as repayment for her tax debts.

After Kristen Simonson signed and mailed her tax returns fraudulently claiming that the federal government owed her hundreds of thousands of dollars, she had several weeks to contemplate her actions before the U.S. Treasury sent her a huge check. After Kristen Simonson received over a half a million dollars in the mail from the U.S. Treasury, she did not waver, even though she knew she was unemployed and did not earn any of the income she had falsely reported as over-withheld. Instead, she affirmatively helped Joshua Simonson by opening accounts to launder and hide the money. On November 6, 2008, within seven days of receiving their first refund, Kristen and Joshua Simonson bought a \$50,000 vehicle for Kristen to drive.

In the four months after depositing their first refund check on October 30, 2008, the Simonsons spent \$169,000 of proceeds, including air travel, dining, \$50,000 on the SUV for Kristen, and another \$52,293 on household expenses. Tr. Ex. 145; Tr. Trans. pp. 339-41. Even after the IRS told Kristen Simonson, in January of 2009, that there was an error in their refunds and Kristen and Joshua Simonson needed to repay the money, Kristen Simonson continued to spend the criminal proceeds and made no attempt to repay the federal government.

Kristen Simonson had over a year to think about her actions before Joshua, with her knowledge, sent a fake million dollar check to the IRS in February of 2010. The first time

⁵ See Tr. Trans. pp. 214-15, concerning testimony that Teresa Marty Search warrant was executed January 21, 2009 and the first IRS collection notices were sent to the Simonsons on January 26, 2009.

Kristen Simonson made an attempt to repay the IRS with real money was on June 25, 2010, the day before they first appeared in court for this criminal case. And on this occasion, Kristen Simonson paid only \$1,000 back to the federal government. Tr. Trans. pp. 341-42.

The protracted nature and involved circumstances of her blatant fraud are troubling, and warrant a sentence at the top end of the guideline range.

2. The History and Characteristics of the Defendant

Kristen Simonson is a physically attractive, college-educated, Caucasian female, with no criminal history, she is a mother of three young children, and if she is incarcerated, she cannot work to pay back her restitution. She may argue that the Court should show leniency because of some, or all, of these factors. Most all of these factors, however, are irrelevant in determining Kristen Simonson's appropriate sentence. The government believes that only her lack of criminal history is a relevant factor in determining the appropriate sentence. The PSR correctly calculated her criminal history at a category I, so this history is being fairly taken into consideration.

Well-educated. Kristen Simonson's history and characteristic of being a well-educated women should not serve as a reason for a downward departure under U.S.S.G. § 5H1.2 or a variance under 18 U.S.C. § 3553(a) from the sentencing guidelines. "Education and vocational skills are not ordinarily relevant in determining whether a departure is warranted..." U.S.S.G. § 5H1.2. A departure based on § 5H1.2 is supported only if it is present to an exceptional degree or in some other way that makes the case different from the ordinary case where the factor is present. *United States v. Dyck*, 334 F.3d 736, 743 (8th Cir. 2003). *See also United States v. Drew*, 131 F.3d 1269 (8th Cir. 1998)(Court of Appeals found abuse of discretion for Judge Ortrie

Smith's departure based on high intelligence and candidacy for a doctoral degree in chemistry). In this case, Kristen Simonson's college education should not serve as a factor for sentencing leniency.

In her sentencing memo, Kristen Simonson continues to argue, even at this late date, that she did not know she was doing anything illegal, and should receive a more lenient sentence because of her "lack of intent." Clearly this is false as she received numerous pre-filing warnings, and she did not repay the money after the IRS began its extensive collection efforts. Indeed, her actual response was to help launder and spend the proceeds. Kristen Simonson's obvious intelligence makes it apparent that these claims of naivety are unreasonable. The jury did not believe her claims, finding her guilty of every crime charged.

Kristen Simonson is well-educated. Not only did she graduate from Oak Grove High School with a 3.55 grade point average, she was fortunate enough to attend college, and she received a bachelor's degree in early education with a college grade point average of 3.76. Warnings aside, Kristen Simonson is obviously too smart to think her half a million dollars in tax refund was legitimate. This college graduate knew she was not entitled to these funds. Kristen Simonson is too well educated to think the government had a secret account for her at the Federal Reserve Bank with over a million dollars in it for her use. This college graduate knew the million dollar Federal Reserve Bank check that Joshua was sending to the IRS was fake. The fact that she continues to allege, even post-conviction, that she did not have criminal intent reveals her continued disrespect for the process and her refusal to accept responsibility for her actions.

Mother of three young children. Kristen Simonson's history and characteristic of being a mother of three young children should not serve as a reason for a downward departure under U.S.S.G. § 5H1.6 or a variance under 18 U.S.C. § 3553(a) from the sentencing guidelines. Unfortunately, many primary caregivers and even sole caregivers are selfish enough to commit serious crimes. Kristen and Joshua Simonson's case is not out of the ordinary from other cases in which the only caregiver is serving a prison sentence. "[F]amily ties and responsibilities are not ordinarily relevant in determine whether a departure is warranted..." U.S.S.G. § 5H1.6. A departure based on § 5H1.2 requires a showing that the prison sentence will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family. Application Note (ii) of § 5H1.2 explains that "the fact that the defendant's family might incur some degree of financial hardship or suffer to some extent from the absence of a parent through incarceration is not in itself sufficient as a bases for departure because such hardship or suffering is of a sort ordinarily incident to incarceration." *See United States v. Underwood*, 639 F.3d 1111(8th Cir. 2011)(care of son who suffered from muscular dystrophy and required around-the-clock care that other parent could not provide by themselves did not warrant a downward departure under § 5H1.6); *United States v. Jacobsen*, 308 Fed.Appx.32, (8th Cir. 2009)(sole caretaker, who was also the only financial and emotional support of spouse with several serious health problems did not warrant a downward departure under § 5H1.6).

At trial, Kristen Simonson repeatedly reminded the jury that she was a mother of three young children, and she now reiterates this fact to garner the Court's sympathy. Not surprisingly, Kristen Simonson claims she is extremely remorseful and concerned for her children now that she has been convicted. But where was Kristen Simonson's concern for her

children when Kristen Simonson's sister-in-law warned her that OID filings were illegal?⁶ Where was Kristen Simonson's concern for her children when she falsified her income tax returns and mailed them to the IRS? Where was Kristen Simonson's concern for her children when she spent the criminal proceeds on a luxury vehicle and other niceties? Where was Kristen Simonson's concern for her children when a federal search warrant was executed at her tax preparer's house, but instead of coming clean she chose to help hide and spend the proceeds? Where was Kristen Simonson's concern for her children when she received multiple demands by the IRS for repayment? Where was Kristen Simonson's concern for her children when she submitted a fake million dollar check to the IRS as repayment for her tax refund? Where was Kristen Simonson's concern for her children when she was interviewed multiple times by law enforcement? Where was Kristen Simonson's concern for her children when she rejected all potential plea offers with the United States Attorney's Office?

Pursuant to Application Note (iii) of § 5H1.6 of the U.S.S.G., Kristen Simonson must make a showing that with both Joshua and Kristen Simonson in prison, there is no replaceable caretaking and financial support available for their children. Even if Kristen and Joshua serve significant prison sentences, their three children can be cared for by their extended family. Indeed, the children already reside with Joshua's mother. (PSR ¶ 57). The Simonson family has been living in Great Bend, Kansas, since the spring of 2012 with Joshua Simonson's mother, Chonnita Simonson. Kristen Simonson's father-in-law, Steve Simonson, also lives near Great Bend, Kansas, and has provided financial assistance to her husband and children since the

⁶ According to Dallas Moody's November 27, 2012 memorandum of interview, Moody specifically warned Kristen Simonson many times prior to the filings that "it is not a matter of IF you are going to jail, but WHEN."

inception of this criminal case. Kristen Simonson's father and step-mother are also still relatively young, live locally, and can also assist with the care of their grandchildren.

(PSR ¶ 56). Kristen Simonson also has two grown brothers and a grown sister in Missouri.

Restitution. Kristen Simonson argues that she should be allowed to stay out of prison in order to work to pay back her restitution. However, this assertion rings hollow. First, to the government's knowledge, she does not currently have a job and has not had one for some time. And every white collar criminal defendant could make this same argument. Second, she has made no attempt to work to pay back the IRS since first being notified in January 2009 that she owed the money back. Instead, she helped spend the proceeds down to nothing, sending in only a token \$1,000 check the day before her first court appearance to try to obstruct her criminal proceeding.

3. The Seriousness of the Offense

Tax fraud is a serious offense. Most tax fraud cases concern minimizing or eschewing an individual's tax liability. But the Simonson's case is even more egregious. Their tax fraud affirmatively tricked the federal government into sending out nearly a million dollars in windfall checks without any basis whatsoever in law. Such egregious conduct must be strongly deterred. Filing false claims is not a victimless crime – it affects every American taxpayer. Tax dollars support our country's infrastructure with roads, bridges, water treatment facilities, street lights, trash removal, maintenance of public parks and historical sites. Taxes fund hospitals and health services such as preventive immunization and disaster relief. We rely on taxes to maintain our police departments, fire emergency services, homeland security and our national defense forces such as the army, navy and air-force. Government institutions like the departments of agriculture, commerce, energy, urban development, treasury, and the judiciary are funded by

taxes. Government elections and free education are likewise dependent on the taxation of all citizens, and the list goes on. Without taxes society would disintegrate and our nation would crumble.

Kristen Simonson's tax fraud crimes are even further aggravated because after she was caught and told to repay the refunds, she scoffed at the notion, instead deciding to send a fake million dollar check to the IRS in the form of a dummied-up Federal Reserve Bank check. This action is shocking. It is no little mistake to knowingly and intentionally send the federal government a fake million dollar check, hoping to trick the government and make your tax fraud problems go away. An upper guideline sentence for Kristen Simonson is appropriate and warranted, and appropriately reflective of the seriousness of her offenses.

4. The Need to Promote Respect for the Law and Provide Just Punishment

It is clear that neither Kristen Simonson nor her husband had, and still may not have, any respect for the federal law. The evidence at trial showed that the Simonsons thought their false tax returns would raise some red flags, and they actually expected to be contacted and interviewed by federal agents of the IRS after filing their fraudulent tax returns claiming false 1099 OID withholdings. The Simonsons were greedy for money that they did not have, and knowing that they might be questioned about their tax return claims did not deter them. They were not intimidated by the federal government, instead they argued it had no jurisdiction over them. The Simonsons continue to be undaunted by the authority of the criminal justice system, including the authority of this Court. An upper guideline sentence for Kristen Simonson is appropriate and warranted, and is necessary to promote respect for the law and provide a just punishment.

5. The Need to Afford Adequate Deterrence

As previously discussed, tax fraud is a serious offense and affects every United States citizen. Unfortunately there is an insufficient deterrence in the criminal justice system to stop the countless offenders. Most offenders believe they can “fudge” on their taxes and not get caught...and if caught, can simply repay the tax deficit with no criminal penalties. The Simonsons’ is not a case of “fudging.” This is egregious, blatant fraud from the public coffers.

The government’s concern is that Kristen Simonson will not receive an upper guideline sentence even though her criminal acts are egregious and spread over a long period of time. Considering her uncharged relevant conduct – involvement in money laundering and signing the fake million dollar check – which was proved at trial, her guidelines are under-representative of the true extent and seriousness of her entire criminal conduct. An upper guideline sentence for Ms. Simonson would insure a much needed deterrence for the general public to see this physically attractive, college-educated, Caucasian female, with no criminal history, and a mother of three young children, nonetheless go to prison for a substantial term. The average tax offender can easily compare themselves with Kristen Simonson, and therefore, would be more deterred by seeing her go to prison for almost six years.

6. The Need to Avoid Unwarranted Sentencing Disparities

The Guidelines range for co-defendant Joshua Simonson has been calculated in the PSR at 121-151 months. His Guidelines range is significantly greater than Kristen Simonson. He was the original initiator of the scheme, and he was charged and convicted of the additional crimes of money laundering and fictitious obligations, perjuring himself in the process. But the proof at trial showed that Kristen was also involved in these additional crimes. She was also involved in the Simonsons’ obstreperous attempts to disrupt the investigation and trial, including through

making myriad frivolous arguments challenging the Court's jurisdiction. This proved relevant conduct makes her Guidelines range under representative of her true scope of involvement. Both defendants deserve upper Guidelines sentences. For Joshua Simonson to receive an upper Guidelines sentence and not Kristen Simonson would be a disparity in the sentences that is unwarranted. They are both college-educated parents of three children, and they both received repeated advance warnings from their sister-in-law that OID filings were criminal. Undeterred, they both colluded together in their crimes, both receiving and spending hundreds of thousands of dollars from the federal government while knowing they did not deserve it. They both signed dozens of frivolous letters submitted to the IRS, the U.S. Attorney's Office, and the Court, attempting to disrupt first the collection, then the prosecution, then the trial.⁷ They both rejected plea offers, instead opting to try their luck with a jury, trying to convince the jury that they had no intent to defraud. The jury saw through this and convicted them on all counts. Because they have earned every point and enhancement in their PSRs, and because their conduct has been particularly egregious, disruptive, undeterrable, and disrespectful of the law, the process and the Court's jurisdiction, they both deserve sentences at the top of their Guidelines ranges.

Kristen Simonson cites to the 12-month sentence given early this year by Judge Wimes to Jennifer Wilson, a defendant in the Gerald Poynter OID scheme case.⁸ However, that case is inapposite to Kristen Simonson's case. First, Wilson promptly pled guilty and received three points off for accepting responsibility. Second, she pled guilty to a less putative count than what Simonson was convicted of, resulting in a lower base offense level and no grouping points. Third, in contrast to the whopping \$749,200 that the Simonsons received, Jennifer Wilson personally received only about \$13,312 from her fraud scheme. Fourth, Wilson did not launder

⁷ Even after the convictions, Joshua Simonson has continued to make frivolous filings in an attempt to disrupt the sentencing.

⁸ Case no. 11-00223-14-CR-W-BCW.

her proceeds, she did not make lavish purchases in spite of receiving multiple notices from the IRS, and she was not involved in trying to trick the IRS with a fake million dollar check. Fifth, Wilson paid off her entire debt owed to the IRS on the same date as her change of plea hearing, while Kristen Simonson paid back only \$1,000 the day before her first court appearance.

Upper Guidelines sentences for the Simonsons would promote consistency with other similarly situated defendants. When obstructive, unrepentant defendants go to trial and are convicted of such egregious conduct, and especially where the Guidelines range is under representative of their true range of conduct as in Kristen Simonson's case, they deserve to be sentenced at the top of their Guidelines ranges. Lesser sentences could cause disparities between the Simonsons and others similarly charged and convicted at trial.

7. Conclusion

With her eyes open, and with alternatives always available, this defendant chose to go down this path. For over four years she unwaveringly stayed on the same path. Only after being convicted resoundingly at trial does she express any remorse. But her remorse is conditional in that she continues to assert her lack of intent. Because she chose this path, she should now have to face the full unhappy consequences of her course of action. It is unfortunate that her family will have to bear some of the consequences for her selfish acts. But in the end, Kristen Simonson has only herself to blame.

B. Recommended Sentence for Monetary Penalties

1. Restitution

The entry of a restitution order is mandatory in this case because the government suffered pecuniary losses. The government concurs with the recommended restitution figure in the PSR of \$810,218.

2. Fine

The United States does not object to the Court waiving imposition of a fine.

3. Special Assessment

Because the defendant was convicted of five counts, imposition of a \$500 special assessment is required.

III. Conclusion

For the foregoing reasons, the United States respectfully requests that the Court impose a 71-month prison sentence with an order of restitution in the amount of \$810,218.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 12, 2013, to the CM-ECF system of the United States District Court for the Western District of Missouri, and a copy of the foregoing was mailed to:

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/s/ Roseann A. Ketchmark
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