

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in this State and Parish, personally appeared

DAVID S. GUNN ("Affiant"),

who after being duly sworn, did swear, affirm, and attest to the following:

1. THAT Affiant was asked to provide an opinion to counsel for Arthur Gilmore and Red Stevens with respect to the preliminary IRS criminal investigation of Nouri Ed Hakim, the Government's witness in the trial resulting in the conviction of Arthur Gilmore and Red Stevens.

2. THAT Affiant was provided with the following documentation in connection with said request:

- a) The Affidavit of Blake Deshotelis dated June 9, 2011;
- b) The email from Steve Pickering, accountant, to Joe D. Guerniero, attorney, dated January 14, 2008
- c) The FBI Memorandum of Special Agent Palmer Allen dated October 30, 2009;
- d) The Affidavit of Internal Revenue Service Special Agent Darrin Heusel dated July 8, 2011
- e) The Affidavit of FBI Special Agent Billy J. Chesser dated June 23, 2011
- f) The Affidavit of Nouri Ed Hakim dated June 22, 2011, and
- g) The Consent to Disclose Tax Information executed by Nouri Ed Hakim dated June 22, 2011.

3. THAT Affiant's review was limited to the described documents, and various discussions with counsel for Mr. Gilmore and Mr. Stevens.

4. THAT on the basis of the information obtained as described, Affiant's opinion is as follows:

The information presented describes the sale of Houston real estate in or about 2005, by Corridors 1 or Corridors 2 Properties, LLC (presumably owned by the Hakims), to a Philadelphia investment firm (presumably unrelated to the Hakims). The alleged

information presented includes a selling price of \$13 million, against an adjusted (depreciated) income tax basis of \$200,000 that may have resulted in a taxable gain of the significant difference of \$12.8 million to the transferor entities. Deshotels alleges the use of multiple fraudulent property transfers, to evade the capital gains tax exceeding \$2 million. It appears from the Affidavit that this was accomplished through the acquisition of their own real estate properties located in Ouachita Parish.

The Deshotels Affidavit describes a sale by the Hakims of their property in Ouachita Parish that was transferred through a Hakim employee, David Moses, who then transferred the property to the Hakim brothers and an affiliated entity, Penny Realty, Inc. The information describes an attempt to structure the transfer as a "tax-deferred" exchange, pursuant to Internal Revenue Code section 1031. Based upon the allegation that the transferor entity was owned by the Hakims and, after routing the transfer through a Hakim employee, the ultimate transferee was the Hakims and Penny Realty, a Hakim entity, the attempted Section 1031 exchange would not have been effective. Assuming this to be the case, the gain would instead have been taxable, and significant income tax should have been reportable and payable to the IRS.

This result is borne out further by the email described in the Affidavit of Blake Deshotels (page 4). The email was dated Monday, January 14, 2008, from Steve Pickering, apparently Hakim's accountant, to Joe D. Guerriero, apparently Hakim's attorney, and states as follows:

"After the sale of the Houston building in the Section 1031 transaction, the properties that were purchased with the proceeds to defer the tax gain were owned in a joint venture of Penny Realty, Inc., Eddie, Joseph, and Jack. Since they were owners as individuals it was decide (sic) to establish three LLC entities and transfer the property into the LLC for a proportional ownership of the LLC instead of the individual properties ...

.....
Joseph and Eddie are aware of the transaction process we are accomplishing, Steve"

In his Affidavit (pages 4, 5, & 6), Mr. Deshotels describes a significant amount of additional documentary evidence that apparently was provided to Special Agent Darrin Heusel of the Internal Revenue Service. These documents were not reviewed, for the purposes of this opinion.

Section 1031 of the Internal Revenue Code does not allow the deferral of gain by structuring an acquisition of the Replacement Property within a related entity. Instead, Section 1031 requires that the transferor must, within the required 45 day period, identify "like-kind" business or investment property, and then acquire such property, within 180 days. (Stated differently, the same party (the Seller of the Relinquished Property) must generally complete the exchange, by acquiring, as Purchaser of, the Replacement Property.) The Affidavit and described email indicates that the transferor entity (either Corridors 1 or Corridors 2 Properties, LLC) did not acquire the Replacement Property but, instead, the Hakim family acquired the property, either directly or indirectly through the described corporate entity, Penny Realty, Inc. As described, this would be a defective Section 1031 exchange transaction, and the taxable gain would not be deferred, but instead would be fully taxable to the original transferor. As described extremely significant amounts of tax would be owed.

In addition, the transactions described in the Deshotels Affidavit appear to involve the Hakims selling Ouachita Parish properties (the farm at LoneWa, the Sherrouse Plantation Development property, the building on St. Charles and the old K-Mart building), to their employee, David L. Moses, who then transferred these properties in an attempt to improperly characterize these properties as the Replacement Properties, described above, to the Hakim brothers and Penny Realty, Inc., a Hakim company. Any proceeds received by "an agent" of the Taxpayer, including someone who served as an employee within the prior two year period, would be deemed to be constructively received by the Hakims.

As described, it appears that the Hakims attempted to qualify these transactions as a Section 1031, tax-deferred exchange, by identifying and then acquiring properties that they already owned, as Replacement Properties. As a result of using their own properties as the Replacement Property, the Hakims seem to have actually received the sales price of \$13 million, without payment of the resulting income tax. This is not allowable under Section 1031. As a result the gain should have been recognized.

Mr. Deshotels also questions the "undervalued" donations in Penny Realty, Inc., to the Hakim children. Without further information, and against the background of the ethical members of the Bar and CPA professions properly recommending significant

valuation discounts (for lack of marketability, and lack of control, of minority interests in such entities, as described by Mr. Deshotels), no opinion may be offered in this area.

In the FBI Memorandum dated October 30, 2009 authored by Special Agent Palmer Allen, the receipt of the complaint from Mr. Deshotels and his attorney is described. The complaint is summarized by Mr. Allen as allegations that Hakim "was using different Limited Liability Corporations (LLCs) that he owned to hide assets from the government as well as to commit tax fraud/evasion ...". At the conclusion of the complaint, Agent Allen discussed these allegations with his supervisor, Jared Medaries, Special Agent Bill Chesser and Assistant U.S. Attorney Mignonne Griffing. Mr. Deshotels and his attorney were referred to the Criminal Investigation Division, Special Agent Andrew Thornton.

The Affidavit of Special Agent Darrin Heusel with the Internal Revenue Service states that he opened a "primary investigation", related to Ed Hakim and his related companies. A meeting was held with Mr. Deshotels, after which Special Agent Heusel was contacted by Assistant U.S. Attorney Mignonne Griffing, who asked Heusel to advise her "if my investigation uncovered any wrongdoing" due to her obligation of disclosure to defense counsel. No contact was initiated with Hakim. Due to privacy laws, Agent Heusel provided no details to Griffing, but did advise her that the investigation had been closed.

5. THAT, on the basis of the information described, and against the background of Affiant's 37 years of experience in the income tax profession, both as a practicing CPA, and then as a tax attorney, the Criminal Investigation Division of the Internal Revenue Service could have been expected to fully explore the Deshotels' allegations and, at a minimum, interview Mr. Hakim. Mr. Deshotels' allegations were specific and detailed in nature. Further, Mr. Deshotel submitted a significant volume of corroborating, documentary evidence, beyond the email from an individual described as Mr. Hakim's CPA.

6. THAT, on the basis of the information described, and against the background of Affiant's 37 years of experience in the income tax profession, both as a practicing

CPA, and then as a tax attorney, the Criminal Investigation Division of the Internal Revenue Service could have been expected to take the position that the information presented suggests evidence of an intent to intentionally understate income tax.


7. THAT, based upon the alleged taxable gain resulting from the defective Section 1031 exchange of \$12.8 million, the federal income tax would have been within the range of \$2 to \$3 million, depending upon the allocation between (a) prior depreciation claimed on these properties, and (b) the "true appreciation".

8. THAT, the reasoning for declining further investigation is unclear.

READ, DATED, AND SIGNED, this 7th day of August, 2011.


DAVID S. GUNN

Sworn to and subscribed before me this 7th day of August, 2011.


NOTARY PUBLIC
Printed Name of Notary: Tami Tucker York
State Bar Roll No./Notary ID: 25276

David S. Gunn
5800 One Perkins Place Drive, Building One
Baton Rouge, LA 70808
(225) 767-1550; Fax: (225) 767-1559

Education

LSU Law Center, Baton Rouge, Louisiana; J.D., 1979; graduated upper 15%
Northeast Louisiana University, Monroe, Louisiana; BBA in Accounting, 1974
Jonesboro-Hodge High School, Jonesboro, Louisiana

Professional Certifications

Board Certified Tax Attorney, Louisiana State Bar Association, 1984
Board Certified Estate Planning and Administration Specialist, Louisiana State
Bar Association, 1996
Certified Public Accountant, State Board of CPAs of Louisiana, 1975

Employment

Gunn & York, LLP, Attorneys, Baton Rouge, LA, since 1980.
Specialty in tax, estate, and business planning, including tax return preparation
for Taxpayers who are highly compensated and/or Taxpayers facing complex tax
issues, representation before the Internal Revenue Service, Louisiana
Department of Revenue, and various local (Parish) taxing authorities, and the
drafting of wills, trusts, and other estate planning documents. Substantially
involved in commercial, business, partnership, LLC, and tax litigation.
Experienced in sales/use tax controversies and litigation. Expertise includes
planning for retirement, long-term care and accumulation for college and other
goals. Experienced in the formation of corporations, limited liability companies,
and partnerships. Experienced in mergers/acquisitions and the negotiation and
drafting of business contracts, such as Buy-Sell Agreements.

Louisiana State University, Baton Rouge, LA 1980 to 2000 (Retired)
Part-time instructor of Business Law; intensive coverage for CPA candidates
including UCC Article 2 (Sales of Goods), UCC Article 9 (Security Devices), UCC
Articles 3 & 4 (Negotiable Instruments and Banking Transactions), Chapters 7,
11, and 13 of the Bankruptcy Code, Suretyship, Accountant's Legal Liability
(Malpractice), Louisiana Community Property and Inheritance Laws.

H. J. Lowe & Co., CPAs, Baton Rouge, LA, from 1977 to 1980
Manager of Tax Division of medium size CPA firm, responsible for firm's tax
preparation, tax planning, research and basic estate planning; part-time work
during Law School, full-time tax manager from 1979-1980.

Bradley, Heller, Donald, Webb & Stewart, CPAs, Monroe, LA, from 1974 to 1976
Tax preparation, basic research and basic tax planning for large local CPA firm

Speaking Engagements

(identified by the seminar topic and the host):

- 1.) *Tax Advocacy*, Louisiana Society of CPAs, Baton Rouge Bar Association, and the Baton Rouge Chapter of the Louisiana Society of CPAs;
- 2.) *Selected Critical Issues for the Estate Planner*, Surgent McCoy, LLC;
- 3.) *Taxpayer Advocacy and IRS Controversy Course: How to Research, Defend, Appeal, and Negotiate with the IRS*, Surgent McCoy, LLC;
- 4.) *Estate and Wealth Planning for the 21st Century*, Surgent McCoy, LLC;
- 5.) *Tax-Free Exchanges under Section 1031*, Louisiana Society of CPAs;
- 6.) *Negotiations and Tax Aspects of Buying and Selling a Business*, Louisiana Society of CPAs;
- 7.) *Buying or Selling a Business (for the CPA Advisor)*, Baton Rouge Chapter of the Louisiana Society of CPAs, and Baton Rouge Bar Association.

Other

Appointed as Special Master by Judge Annette M. Lassalle, Division D, of The Family Court for the Parish of East Baton Rouge, LA, in the matter captioned, "*Polito v. Polito*, Docket No. 160865, Division D, The Family Court, Parish of East Baton Rouge, State of Louisiana".

Author of the *Tax & Estate Planner*, published two-three times a year and distributed to approximately 1,500 clients and professional contacts, from 1997 until 2005.

Devout Catholic, active in St. Aloysius Catholic Church in Baton Rouge; Past member of Facilities and Maintenance Committee.

Four children: Pamela (age 39); Lauren (age 25); Elyse (age 21); Daniel (age 14).

Hobbies: golf, running, sports/activities with children. Member: Country Club of Louisiana (golf membership).