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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSEPH FORD PROCTOR,</p> <p>Defendant - Appellant.</p>

No. 12-50054

D.C. No. 2:11-cr-00025-GHK-1

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Argued and Submitted March 7, 2013
Pasadena, California

Before: HURWITZ, THOMAS, Circuit Judges, and BEISTLINE,** Chief District Judge.

Joseph Proctor appeals a sentence on convictions for two counts of subscribing to a false tax return, 26 U.S.C. § 7206(1), arguing that the district court

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The Honorable Ralph R. Beistline, Chief United States District Judge for the District of Alaska, sitting by designation.

miscalculated the Sentencing Guidelines' advisory range of incarceration before imposing a sixty-month sentence. Adopting the tax-loss determination suggested by the probation office, the court found that the tax loss caused by Proctor's offenses exceeded \$400,000.00. Despite not objecting at trial, Proctor now argues that the record does not support a tax-loss finding of more than \$400,000.00, and the correct advisory range should have been forty-one to fifty-one months.

The parties now agree that Proctor's domicile was in California during the 2002 and 2003 tax years. Because the parties disagree concerning the impact the domicile determination should have on Proctor's sentence, this matter is **VACATED** and **REMANDED** for resentencing so that the district court may consider this issue in the first instance.

Additionally, Proctor's Motion to Take Judicial Notice filed July 30,2012, is hereby **GRANTED**.