

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2004-27, page 625.

Tax avoidance schemes; meritless “corporation sole” arguments. This ruling emphasizes to taxpayers, tax scheme promoters and return preparers that, while a “corporation sole” is a legitimate corporate form that may be used by a religious leader to hold property and conduct business for the benefit of the religious entity, a taxpayer cannot avoid income tax by establishing a religious organization for tax avoidance purposes.

Rev. Rul. 2004-28, page 624.

Frivolous tax returns; excluding gross income under section 911. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with frivolous tax schemes, that there is no basis for excluding income earned in a State, Commonwealth, or Territory of the United States under section 911 of the Code. The ruling also describes many of the possible civil and criminal penalties that apply to people who claim tax benefits on their return based on frivolous claims under section 911.

Rev. Rul. 2004-29, page 627.

Frivolous tax returns; meritless “claim of right” arguments. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with frivolous tax schemes, that there is no “claim of right” doctrine that permits an individual to take the position that either the individual or the individual’s income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who make frivolous “claim of right” arguments to evade tax.

Rev. Rul. 2004-30, page 622.

Frivolous tax returns; attempting to avoid taxes under section 861. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with tax schemes, that there is no authority in sections 861 through 865 of the Code that permits an individual to take the position that either the individual or the individual’s U.S. based income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who make frivolous section 861 arguments to evade tax.

Rev. Rul. 2004-31, page 617.

Frivolous tax returns; meritless “removal arguments.” This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with schemes, that there is no law, court decision or other authority that permits a taxpayer to remove himself from the federal tax system in order to avoid otherwise applicable taxes. Arguments to the contrary are not only wrong, but frivolous.

Rev. Rul. 2004-32, page 621.

Frivolous tax returns; meritless home-based business deductions. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with claiming frivolous deductions based on a purported home-based business, that there is no basis for claiming personal, living, and family expenses as business deductions. This return position has no merit and is frivolous.

(Continued on the next page)

Finding Lists begin on page ii.



Rev. Rul. 2004–33, page 628.

Frivolous tax returns; “reparations tax credit.” This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with tax schemes, that there is no “reparations tax credit” that permits an individual to take the position that the individual based on certain classifications is entitled to a large refund the individual would not otherwise receive. The ruling also describes many of the possible civil and criminal penalties that apply to people who claim refunds or other tax benefits on their returns based on frivolous reparations tax credits.

Rev. Rul. 2004–34, page 619.

Frivolous tax returns; filing a “zero return.” This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with tax schemes, that a “zero return” will not succeed in permitting an individual to take the position that the individual or the individual’s income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who file a frivolous “zero return” that requires the Service to conduct a deficiency inquiry.

Rev. Rul. 2004–36, page 620.

Fringe benefits aircraft valuation formula. For purposes of section 1.61-21(g) of the regulations, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2004 are set forth for determining the value of non-commercial flights on employer-provided aircraft.

Notice 2004–13, page 631.

This notice provides information about common mistakes that individual taxpayers make when they prepare their individual federal income tax returns. Taxpayers who avoid these mistakes can save themselves time in correcting the mistakes and speed up the receipt of any refunds.

Notice 2004–22, page 632.

This notice informs and educates taxpayers about how to avoid making frivolous arguments and what will happen if they do. This notice describes many of the frivolous arguments that people have made recently to reduce or eliminate their taxes. It also describes many of the possible civil and criminal penalties that apply to people who pay less tax than they owe or refuse to file their returns based on frivolous arguments.

EXEMPT ORGANIZATIONS

Announcement 2004–17, page 635.

A list is provided of organizations now classified as private foundations.

Announcement 2004–18, page 639.

Championship Drivers Association Benevolence Fund, of Indianapolis, IN, and Children’s Express Foundation, Inc., of Washington, DC, no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.*

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* **Beginning with Internal Revenue Bulletin 2003-43**, we are publishing the index at the end of the month, rather than at the beginning.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 61.—Gross Income Defined

Frivolous tax returns; meritless “removal arguments.” This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with schemes, that there is no law, court decision or other authority that permits a taxpayer to remove himself from the federal tax system in order to avoid otherwise applicable taxes. Arguments to the contrary are not only wrong, but frivolous.

Rev. Rul. 2004-31

PURPOSE

The Service is aware that some individuals are attempting to reduce their federal income tax obligations by claiming that they have been “removed” or “redeemed” from the federal tax system. Although the specific arguments made by these individuals vary, some argue that the Government commits a fraud when it attempts to collect debts, including tax debts, and that this purported fraud allows individuals to “chargeback” debts that the Government purportedly owes to these individuals to eliminate any asserted tax liability. “Removal,” “redemption,” and “chargeback” schemes are referred to here collectively as “removal schemes” and “removal arguments.” Some promoters are marketing a package, kit, or other materials that claim to show individuals how they can avoid paying income taxes based on these and other meritless arguments.

This revenue ruling emphasizes to individuals, and to promoters and return preparers who assist individuals with these schemes, that there is no authority under any U.S. law that supports the argument that an individual can be “removed” or “redeemed” from the federal tax system to avoid tax liabilities or that an individual can satisfy debts, including tax liabilities, by making “chargeback” or other similar arguments. Removal and redemption arguments have no merit and are frivolous.

The Service is committed to identifying individuals who attempt to avoid or evade their tax obligations. The Service will take vigorous enforcement action

against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the IRS are processed through the Service’s Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

DISCUSSION OF REMOVAL AND REDEMPTION ARGUMENTS AND SCHEMES

Removal arguments and schemes are loosely related and take a variety of different forms. Proponents of removal arguments and schemes typically claim, even though they remain citizens or residents of the U.S., that they are not required to file federal tax returns and pay their tax obligations because they have been removed or redeemed from the federal tax system. As a result of participating in removal schemes, these individuals do not file required returns or pay the income tax that they owe.

In some variations of the removal argument, individuals claim that the Government commits a fraud when it attempts to collect debts, including tax debts, and that this purported fraud allows individuals to “chargeback” debts that the Government purportedly owes to these individuals to eliminate any liability to the Government. In other variations, individuals argue that Federal Reserve notes, or “paper money,” are not legal tender and that the Government has been wrongfully using taxpayers and their labor as security for the Government’s obligations. Other

individuals argue that they may reclaim, or “chargeback,” their own value from the Government as a result of the Government’s wrongful conduct and then use that value to pay the individuals’ debts. Participants in removal schemes often attempt to offset, collect or “redeem” their asserted claims against the Government by using or filing liens, bills of exchange, and various Uniform Commercial Code (UCC) forms, or by relying on misinterpretations of federal laws and the Uniform Commercial Code.

Participants in the removal schemes may rely on one or more of the following erroneous arguments, alleged facts or actions to support their frivolous claims: (a) the bankruptcy of the United States occurred contemporaneously with the creation of the Federal Reserve, the start of the Great Depression, the removal of the United States from the gold standard, or the passage of House Joint Resolution 192 (claimed to be a declaration of bankruptcy); (b) the Government’s use of birth certificates of taxpayers as registered securities; (c) the filing of documents with variations on a taxpayer’s name, (*e.g.*, using all capital letters in some documents and standard capitalization in others) creates a “straw man” or “nom de guerre” as the debtor to the Government that replaces the individual who has removed himself from the Government’s jurisdiction; (d) the “redemption” of debts from the Government by filing UCC forms, such as the UCC-1 form; (e) the submission of documents to the U.S. Secretary of the Treasury to establish a fictitious bank account (sometimes referred to as a “Treasury Direct Account”) where the value of charged back debts is located; (f) the practice of “accepting for value” official Government documents and the “charging back” of those documents by responding to them with a “private notice” that may include a “Treasury Direct Account Number,” a “Memory of Account Number” or a “Posted Certified Account Number”; and (g) the use of “Bills of Exchange,” Form UCC-3 and “Sight Drafts” to discharge debts to the Government. This list is not exclusive, however. Participants in

removal schemes also make other equally frivolous arguments.

Instead of filing federal income tax returns with the Service, participants in removal schemes frequently send documents and other correspondence to the Service and other Government agencies. Examples of these documents include: improperly filed Forms 1040-ES, *Estimated Tax for Individuals*, reporting the location of the funds in a fictitious bank account from which the IRS can collect taxes; improperly filed Fiduciary Tax Returns; improperly filed Forms 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, reporting that a person or entity has “charged back” after “accepting for value” the Government’s documents; improperly filed Forms W-9, *Request for Taxpayer Identification Number and Certification*, to obtain a social security or employee identification number of a person or entity to include on the Form 8300; “commercial affidavits” in lieu of tax returns stating that the filer is a secured party and has no income for a particular year; and documents and correspondence to “accept for value” IRS notices of tax liens and levies to have the tax balances paid from the filer’s “Treasury Direct Account.”

There is no authority under any U.S. law that supports the claim that individuals may avoid their federal income tax obligations based on removal arguments such as those described in this revenue ruling. Similarly, there is no authority under any U.S. law that supports the claim that requiring payment of a debt owed to the Government by commercially acceptable means amounts to a fraud by the Government. Section 61 of the Internal Revenue Code provides that gross income includes all income from whatever source derived, including compensation for services. Adjustments to income, deductions, and credits must be claimed in accordance with the provisions of the Internal Revenue Code and the Treasury regulations thereunder and other applicable federal law. Section 6011 provides that any person liable for any tax imposed by the Internal Revenue Code shall make a return when required by Treasury regulations, and that returns must be in accordance with Treasury regulations and IRS forms. Section 6012 identifies the persons who are required to file income tax returns. Section 6151, except as specifically provided, requires that taxpayers pay

their tax when the return is due. Section 6311 requires payment of taxes by commercially acceptable means as prescribed by Treasury Regulations.

Courts repeatedly have rejected removal arguments and other similar arguments as frivolous and have penalized taxpayers who make these types of arguments. See, e.g., *United States v. Sloan*, 939 F.2d 499, 500 (7th Cir. 1991) (affirming criminal conviction for tax evasion and rejecting “wholly defective” arguments that the federal tax laws did not apply to taxpayer because he was a “free-born, natural individual, a citizen of the State of Indiana, and a ‘master’ — not — ‘servant’ of his Government”); *United States v. Condo*, 741 F.2d 238, 239 (9th Cir. 1984) (affirming criminal conviction for tax fraud and rejecting as “frivolous” the argument that Federal Reserve Notes are not valid currency, cannot be taxed, and are merely “debts”); *United States v. Rickman*, 638 F.2d 182, 184 (10th Cir. 1980) (affirming criminal conviction for willfully failing to file a return and rejecting the taxpayer’s argument that “the Federal Reserve Notes in which he was paid were not lawful money within the meaning of Art. 1, § 8, United States Constitution”).

Although individuals who rely on these removal arguments generally do not file federal income tax returns with the Service, some individuals also are relying on removal or similar frivolous arguments to claim that they can reduce or eliminate their tax by filing tax returns in which they report zero income and tax liability. See Rev. Rul. 2004-34, 2004-12 I.R.B. 619 (3/22/2004), for a discussion of this frivolous position.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liability by refusing to file returns and pay tax on the basis that they have been removed or redeemed from the federal tax system. In addition to liability for the tax due plus statutory interest, individuals who fail to file and pay tax or who claim refunds based on this or any other frivolous arguments face substantial civil and criminal penalties. Potential civil penalties include: (1) the section 6651(f) penalty for fraudulent failure to file, which

is up to 75 percent of the amount of taxes the taxpayer should have reported on the return; (2) the section 6651(a)(1) penalty for failure to file, which is equal to up to 25 percent of the amount of taxes the taxpayer should have reported on the return; (3) the section 6651(a)(2) penalty for failure to pay, which is equal to .5 percent of the tax for each month or fraction of a month the tax remains unpaid, not to exceed a total of 25 percent; and; (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Individuals relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; (2) willful failure to make a return or pay tax under section 7203 for which the penalty is up to \$25,000 and imprisonment of up to 1 year, or (3) making false statements under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty under section 6694 for each return prepared by an income tax return preparer who knew or should have known that the taxpayer’s argument was frivolous (or \$1,000 for each return where the return preparer’s actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

Individuals may not avoid or evade their tax liability by refusing to file returns and pay tax on the basis that they have been removed or redeemed from the federal tax system or by claiming that they can “chargeback” their debts to the Government. Arguments that individuals

may be removed or redeemed from the federal tax system or may “chargeback” their debts to the Government have no merit and are frivolous. Individuals who attempt to reduce their federal tax liability by taking frivolous positions based on these arguments will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against individuals where appropriate, and those individuals may also face criminal prosecution. The Service also will determine appropriate civil penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons may also face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-4940 (not a toll-free call).

Frivolous tax returns; filing a “zero return.” This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with tax schemes, that a “zero return” will not succeed in permitting an individual to take the position that the individual or the individual’s income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who file a frivolous “zero return” that requires the Service to conduct a deficiency inquiry.

Rev. Rul. 2004-34

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by filing a return that reports no income and no tax liability (a “zero return”) even though they have taxable income. A taxpayer filing a zero return invariably requests a refund of any taxes withheld by an employer. The Service also is aware that promoters,

including return preparers, are advising or recommending that taxpayers take this frivolous position. Some promoters may be marketing a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on this and other frivolous arguments.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with these schemes, that a taxpayer cannot avoid income tax by filing a zero return. The zero return position has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid or evade their tax obligations by taking frivolous positions, such as the filing of a zero return. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply against return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

DISCUSSION OF THE ZERO RETURN POSITION

Proponents of the zero return position file income tax returns that report no income and no tax liability even though these taxpayers have wages, salary or other income. Taxpayers taking this position typically attach to the zero return a Form W-2 or other information return that reports income and income tax withholding and request refunds from the Service of the withheld taxes. These taxpayers typically rely on one or more frivolous arguments to support the position that wage or other income is not subject to tax. *See, e.g.*, Rev. Rul.

2004-31, 2004-12 I.R.B. 617 and Notice 2004-22, 2004-12 I.R.B. 632 (March 22, 2004).

There is no authority under U.S. law that permits a taxpayer that has taxable income to avoid income tax by filing a zero return. The claim that the filing of a zero return will allow a taxpayer to avoid income tax liability, or will permit a refund of any tax withheld by an employer, is frivolous. Section 61 of the Internal Revenue Code provides that gross income includes all income from whatever source derived, including compensation for services. Adjustments to income, deductions, and credits must be in accordance with the provisions of the Internal Revenue Code and the Treasury regulations thereunder and other applicable federal law. Section 6011 provides that any person liable for any tax imposed by the Internal Revenue Code shall make a return when required by Treasury regulations, and that returns must be in accordance with Treasury regulations and IRS forms. Section 1.6011-1(b) of the Treasury Regulations provides, in relevant part, that each taxpayer should set forth fully and clearly the information required to be included on the return. Section 6012 identifies the persons who are required to file income tax returns.

Courts repeatedly have penalized taxpayers who filed zero returns despite having income sufficient to give rise to a tax liability and have rejected frivolous arguments used by taxpayers to justify a zero return position. *See, e.g., Gillett v. United States*, 233 F. Supp. 2d 874 (W.D. Mich. 2002) (“Numerous federal courts have upheld the imposition of the \$500 sanction by the IRS pursuant to 26 U.S.C. § 6702(a) [for frivolous returns], where, as here, a tax form is filed stating that an individual had no income, but the attached W-2 forms show wages, tips, or other compensation of greater than zero.”); *Hill v. Commissioner*, T.C. Memo. 2003-144 (imposing \$15,000 penalty under section 6673 for frivolous “zero return” position); *Rayner v. Commissioner*, T.C. Memo. 2002-30 (imposing \$5,000 penalty under section 6673 for frivolous “zero return” position).

CIVIL AND CRIMINAL PENALTIES

The Service will disallow any refund claim based on the filing of a zero return and will determine the correct amount of

tax due from the taxpayer. The Service also will seek the return of any erroneous refund resulting from a zero return. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on this and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$500 penalty under section 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty under section 6694 for each return prepared by an income tax return preparer who knew or should have known that the taxpayer's argument was frivolous (or \$1,000 for each return where the return preparer's actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and

abetting an understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

A taxpayer cannot use a zero return to avoid or evade the taxpayer's federal income tax liability. Taxpayers attempting to avoid or evade their federal tax liability by taking frivolous positions will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those taxpayers may also face criminal prosecution. The Service also will determine appropriate penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons may also face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-4940 (not a toll-free call).

26 CFR 1.61-21: Taxation of fringe benefits.

Fringe benefits aircraft valuation formula. For purposes of section 1.61-21(g) of the regulations, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2004 are set forth for determining the value of non-commercial flights on employer-provided aircraft.

Rev. Rul. 2004-36

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61-21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61-21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61-21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are reviewed semi-annually.

The following chart sets forth the terminal charges and SIFL mileage rates:

<i>Period During Which the Flight Is Taken</i>	<i>Terminal Charge</i>	<i>SIFL Mileage Rates</i>
1/1/04 – 6/30/04	\$34.45	Up to 500 miles = \$.1884 per mile 501-1500 miles = \$.1437 per mile Over 1500 miles = \$.1381 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Division Counsel/Associate

Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact

Ms. Edmondson at (202) 622-6040 (not a toll-free call).

Section 262.—Personal, Living, and Family Expenses

(Also, § 280A.)

Frivolous tax returns; meritless home-based business deductions. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with claiming frivolous deductions based on a purported home-based business, that there is no basis for claiming personal, living, and family expenses as business deductions. This return position has no merit and is frivolous.

Rev. Rul. 2004-32

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by claiming that otherwise nondeductible personal, living or family expenses are deductible because they relate to a purported home-based business of the taxpayer that, in fact, is not a *bona fide* home business. The purported business in these schemes is no more than an attempt to create the appearance of having a home-based business where none actually exists. The Service also is aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on this argument. Some promoters may be marketing a package, kit, or other materials, that claim to show taxpayers how they can avoid paying income taxes based on this and other meritless arguments. This home-based business scheme and the promotion of this scheme are described in more detail in this revenue ruling.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with home-based business schemes, that they cannot avoid income tax by claiming otherwise nondeductible personal, living or family expenses as business deductions that supposedly relate to a purported home-based business that is not a *bona fide* trade or business. This argument has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers

and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

DISCUSSION OF HOME-BASED BUSINESS SCHEMES

Several promoters are selling packages of materials (sometimes referred to as a “Tax Toolbox” or a “Tax Toolkit”) containing video or audio tapes, workbooks, record-keeping aids, or other materials that the promoters claim will assist taxpayers in taking tax deductions for a taxpayer’s personal, living or family expenses under the guise of conducting a business, usually out of the taxpayer’s home. The promoters of these packages typically make one or more of the following claims: (1) taxpayers can legally reduce or eliminate their federal income taxes by establishing a business, regardless of whether the business is a *bona fide* business conducted for profit; (2) operating a business will permit the deduction of personal expenses (such as weddings, children’s allowances, and vacations) as legitimate business expenses; (3) placing a calendar, desk, file cabinet, telephone, or other office-type item in each room of a home will allow taxpayers to deduct all or most of the costs of operating their personal residences; or (4) by using the materials that the promoter sells, taxpayers are guaranteed to receive a large federal income tax refund or to reduce their federal income tax liability by a substantial amount.

Whether an individual is carrying on a *bona fide* trade or business depends on the facts and circumstances. Nevertheless, the

actions taxpayers take as part of a home-based business scheme, such as the placing of a filing cabinet in a bedroom, invariably are taken for the purpose of claiming personal, living or family expenses as deductible business expenses, and not for the purpose of carrying on a *bona fide* trade or business. Home-based business schemes typically are used by taxpayers who perform all of their work at their employers’ place of business.

Section 262 disallows deductions for personal, living or family expenses, except as otherwise expressly provided by the Internal Revenue Code. Medical expenses, for example, are deductible only if the specific requirements of section 213 are satisfied. Similarly, the provisions of section 163(h) govern when an individual taxpayer may deduct interest on a mortgage or home equity loan. See I.R.C. §§ 163(h)(2) and (h)(3).

With respect to business expenses, only expenses paid or incurred during the taxable year in carrying on a trade or business may be deducted under section 162(a). A trade or business expense deduction under section 162, however, is not permitted with respect to a taxpayer’s residence unless specifically permitted in limited circumstances by section 280A. I.R.C. § 280A(a). For example, with respect to the business use of a taxpayer’s residence, section 280A provides that in order for allocable expenses to be deductible under that section, the portion of the taxpayer’s residence must be used *exclusively* by the taxpayer on a regular basis as a principal place of business for the taxpayer’s trade or business, or to meet or deal with patients, clients or customers in the normal course of the taxpayer’s trade or business. If the taxpayer is an employee, the *exclusive* and regular use of a portion of the taxpayer’s residence must be for the convenience of the taxpayer’s employer before any expenses relating to that part of the taxpayer’s residence may be deducted. I.R.C. § 280A(c).

Taxpayers participating in home-based business schemes invariably do not have a *bona fide* home-based business and are not using any portion of their residences exclusively and regularly for a work-related use. These schemes will not convert otherwise nondeductible personal, living or family expenses into legitimate deductions. Moreover, detailed recordkeep-

ing cannot create a permissible deduction unless the expenses at issue are legitimate business expenses. Although deductions must be substantiated in order to be allowable, a taxpayer also must establish entitlement to the deduction, *e.g.*, that the claimed expenses were ordinary and necessary for the production of income in a trade or business.

Courts routinely reject the types of arguments made by participants in home-based business schemes as frivolous and penalize taxpayers who make these types of arguments. Courts also have enjoined promoters who market frivolous tax avoidance schemes that utilize these frivolous arguments. *See, e.g., United States v. Estate Preservation Services*, 202 F.3d 1093 (9th Cir. 2000) (ordering an injunction against a promoter of a trust scheme who made fraudulent statements that expenses related to a personal residence could be deducted if the residence was transferred to a trust); *United States v. Buttorff*, 761 F.2d 1056, 1060 (5th Cir. 1985) (ordering an injunction against a promoter of a trust scheme who made fraudulent statements that personal consumption expenses could be deducted if personal property was transferred to a trust); *Peete v. Commissioner*, T.C. Memo. 2004-31 (imposing accuracy-related penalty against taxpayer who deducted personal and living expenses as purported business expenses related to recruiting participants in a tax avoidance pyramid scheme); *Manley v. Commissioner*, T.C. Memo. 1983-558 (disallowing deductions of claimed personal and living expenses and imposing both an accuracy-related penalty and a penalty under section 6673 for advancing frivolous arguments).

CIVIL AND CRIMINAL PENALTIES

In determining the correct amount of tax, the Service will disallow personal, living or family expenses that have been improperly claimed as business deductions. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on home-business schemes and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount

of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$500 penalty under section 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return prepared by an income tax return preparer who knew or should have known that the taxpayer's argument was frivolous (or \$1,000 for each return where the return preparer's actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

Taxpayers cannot use schemes designed to create the appearance of having a home-based business, where none actually exists, for the purpose of converting otherwise nondeductible personal, living or family expenses into purportedly legitimate deductions. Arguments that such schemes generate tax benefits are frivolous. A taxpayer who is not engaged in a *bona fide* home-based trade or business cannot deduct, as a trade or business expense under section 162, any expenses alleged to relate to a purported home-based business. Taxpayers attempting to reduce their federal income tax liability by taking

frivolous positions will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those taxpayers also may face criminal prosecution. The Service also will determine appropriate civil penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons also may face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

Even if a taxpayer is engaged in a *bona fide* trade or business or is conducting activities from his home for the convenience of his employer, the taxpayer must satisfy the specific requirements of the Internal Revenue Code, such as those contained in sections 162 and 280A, to be entitled to deduct expenses related to those activities. Personal, living or family expenses are not deductible except as otherwise expressly provided by the Internal Revenue Code. I.R.C. § 262(a).

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-4910 (not a toll-free call).

Section 861.—Income From Sources Within the United States

(Also, §§ 6662, 6663, 6702.)

Frivolous tax returns; attempting to avoid taxes under section 861. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with tax schemes, that there is no authority in sections 861 through 865 of the Code that permits an individual to take the position that either the individual or the individual's U.S. based income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who make frivolous section 861 arguments to evade tax.

Rev. Rul. 2004-30

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by taking the position that United States citizens and residents of the United States are not subject to tax on their wages and other income earned or derived within the United States (“the Section 861 position”). These taxpayers rely on sections 861 through 865 of the Code and the regulations (in particular, Treasury Regulation § 1.861-8) to argue that taxes are only imposed on income derived from certain foreign-based activities. The Service also is aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on this argument. Some promoters may be marketing a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with this scheme, that there is no authority in sections 861 through 865 that permits an individual to take the position that either the individual or the individual’s U.S.-based income is not subject to federal income tax. This argument has no merit and is frivolous. The rules of sections 861 through 865 have significance solely in determining whether income is considered from sources within the United States or without the United States, which is relevant, for example, in determining whether a U.S. citizen or resident may claim a credit for foreign taxes paid.

The Service is committed to identifying taxpayers who attempt to avoid their tax obligations by taking frivolous positions, such as the Section 861 position. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of

their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

ISSUE

Whether an individual may avoid income tax by claiming that, under sections 861 through 865, United States citizens and residents are not subject to tax on wages and other income earned or derived in the United States.

FACTS

A taxpayer who is either a citizen or a resident of the United States files a return excluding income received from U.S. sources, claiming that the income is not subject to tax because sections 861 through 865 purportedly provide that only certain foreign source income is subject to tax.

LAW AND ANALYSIS

Sections 861 through 865 do not limit gross income subject to United States taxation to foreign-source income. In Notice 2001-40, 2001-1 C.B. 1355, the Service advised taxpayers that it considers the Section 861 position to be a frivolous position. Courts repeatedly have rejected this and similar arguments as frivolous, and have penalized taxpayers who make these types of arguments. *See, e.g., Takaba v. Commissioner*, 119 T.C. 285 (2002) (concluding that “[t]he 861 argument is frivolous” and sanctioning both the taxpayer and his attorney for making such frivolous arguments); *Madge v. Commissioner*, T.C. Memo. 2000-370 (concluding that the argument that only foreign income is taxable is frivolous). For more information, please see Notice 2001-40. Notice 2001-40 and other information on frivolous tax positions are available on the Service website at www.irs.gov.

CIVIL AND CRIMINAL PENALTIES

In determining the correct amount of tax due, the Service will include income that taxpayers attempt to exclude based on the Section 861 position. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on this and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$500 penalty under section 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return prepared by an income tax return preparer who knew or should have known that the taxpayer’s argument was frivolous (or \$1,000 for each return where the return preparer’s actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

Any position that, under sections 861 through 865, United States citizens and residents are not subject to tax on wages and other income earned or derived in the United States is frivolous. Taxpayers attempting to reduce their federal tax liability by taking frivolous positions based on this argument will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those taxpayers also may face criminal prosecution. The Service also will determine appropriate civil penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons also may face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-4910 (not a toll-free call).

Section 911.—Citizens or Residents of the United States Living Abroad

(Also, Sections 6662, 6663, 6702.)

Frivolous tax returns; excluding gross income under section 911. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with frivolous tax schemes, that there is no basis for excluding income earned in a State, Commonwealth, or Territory of the United States under section 911 of the Code. The ruling also describes many of the possible civil and criminal penalties that apply to people who claim tax benefits on their return based on frivolous claims under section 911.

Rev. Rul. 2004-28

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by taking the position that their wages or other income are excluded from gross income under section 911 of the Internal Revenue Code because the State, Commonwealth, or Territory of the United States in which they resided or performed services is a foreign country. The Service also is aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on this argument. Some promoters may be marketing a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with this scheme, that there is no basis under section 911 for excluding income earned in a State, Commonwealth, or Territory of the United States. This argument has no merit and is frivolous. Section 911 of the Internal Revenue Code permits a taxpayer to elect to exclude income from gross income for U.S. income tax purposes only when the taxpayer earns income and resides outside the United States under the conditions and limitations set forth in that section. For purposes of section 911, States, Commonwealths, and Territories of the United States are not foreign countries.

The Service is committed to identifying taxpayers who attempt to avoid their tax obligations by taking frivolous positions, such as frivolous positions based on meritless section 911 arguments. The Service will take vigorous enforcement action against such taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions.

Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service

also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

ISSUE

Whether an individual may exclude income under section 911 by claiming that he met the requirements of section 911 because a State, Commonwealth, or Territory of the United States is considered to be a foreign country under section 911.

FACTS

Situation 1. A, an individual, resides in State X, a State or Commonwealth of the United States, and performs services exclusively in State X. A was present in State X for all of his taxable year and is therefore not eligible in that taxable year for the exclusion from income under section 911 for citizens or residents of the United States living abroad. Based on the advice of a person who promotes the view that section 911 excludes income earned in a State, Commonwealth, or Territory of the United States because such State, Commonwealth or Territory is a foreign country, A files a return including a Form 2555, *Foreign Earned Income*, or a Form 2555-EZ, *Foreign Earned Income*. On the Form 2555 or Form 2555-EZ, A asserts that he is entitled to the exclusion from gross income under section 911 because he earned such income by performing services in, is a *bona fide* resident of, and has a tax home in, a foreign country (*i.e.*, State X). A acknowledges on Form 2555 or Form 2555-EZ that the services were performed in State X and that he was a *bona fide* resident of State X, but contends that State X is a foreign country and not a part of the United States.

Situation 2. Same as Situation 1 except that A, a resident of State X, claims an exclusion from gross income under section 911 based upon his physical presence in State X. Specifically, A claims he satisfies the physical presence test of section 911 because he was physically present in a foreign country for at least 330 days during his taxable year. A acknowledges on Form 2555 or Form 2555-EZ that he was present

in State X, but contends that State X is a foreign country and not a part of United States.

Situation 3. B, an individual, performed services in and resided on Johnston Island, one of the islands on Johnston Atoll. The Johnston Atoll is a Territory of the United States. B files a U.S. Federal Income Tax Return with a Form 2555 or a Form 2555-EZ in which he asserts that he is entitled to the exclusion from gross income under section 911 because he performed services in, is a *bona fide* resident of, and has a tax home in, a foreign country (*i.e.*, Johnston Atoll).

LAW AND ANALYSIS

Section 911 allows individuals that meet its requirements to elect to exclude from gross income certain foreign earned income. To qualify for the exclusion under section 911, a U.S. citizen or resident working abroad must have a tax home in a foreign country and satisfy either the *bona fide* residence test or the physical presence test. For purposes of section 911, States, Commonwealths, and Territories of the United States are not foreign countries. Treas. Reg. § 1.911-2(g) & (h).

In the situations described above, A and B do not meet the requirements for the exclusion from gross income under section 911. The claim that section 911 excludes income earned in a State, Commonwealth, or Territory of the United States because such State, Commonwealth or Territory is a foreign country has no basis in law or fact. Courts repeatedly have rejected similar arguments as frivolous, imposed penalties for making arguments such as these in court, and upheld criminal tax evasion convictions against individuals making such arguments. Courts repeatedly have rejected similar arguments as frivolous, imposed penalties for making arguments such as these in court, and upheld criminal tax evasion convictions against individuals making such arguments. *See, e.g., In re Becraft*, 885 F.2d 547, 549-50 (9th Cir. 1989) (rejecting the claim that federal law governs only the District of Columbia and U.S. territories and sanctioning attorney for making frivolous arguments); *United States v. Ward*, 833 F.2d 1538, 1539 (11th Cir. 1987) (affirming tax evasion conviction and noting that claim that federal law applies only the District of Columbia,

federal enclaves within States and U.S. territories is “utterly without merit”).

CIVIL AND CRIMINAL PENALTIES

In determining the correct amount of tax due, the Service will include income that taxpayers attempt to exclude based on frivolous section 911 arguments. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on this and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$500 penalty under section 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return prepared by an income tax return preparer who knew or should have known that the taxpayer’s argument was frivolous (or \$1,000 for each return where the return preparer’s actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

Any position that the exclusion from gross income under section 911 applies to a taxpayer’s income because a State, Commonwealth, or Territory of the United States is considered to be a foreign country is frivolous. Taxpayers attempting to reduce their federal tax liability by taking frivolous positions based on this argument will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those taxpayers also may face criminal prosecution. The Service also will determine appropriate civil penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons also may face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-4910 (not a toll-free call).

Section 6651.—Failure to File Tax Return or to Pay Tax

Tax avoidance schemes; meritless “corporation sole” arguments. This ruling emphasizes to taxpayers, tax scheme promoters and return preparers that, while a “corporation sole” is a legitimate corporate form that may be used by a religious leader to hold property and conduct business for the benefit of the religious entity, a taxpayer cannot avoid income tax by establishing a religious organization for tax avoidance purposes.

Rev. Rul. 2004-27

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by taking the position that the taxpayer’s income belongs to a “corporation sole” created by the taxpayer for

the purpose of avoiding taxes on the taxpayer's income. The Service also is aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on this argument. Some promoters may be marketing a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with this scheme, that a taxpayer cannot avoid income tax by establishing a corporation sole for the purpose of avoiding taxes on the taxpayer's income. A corporation sole may be used only by a *bona fide* religious leader for specific, limited purposes relating to the religious leader's office. The argument that a taxpayer's income can be assigned to a corporation sole, and thus be exempted from taxation, has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their tax obligations by taking frivolous positions, such as frivolous positions based on a meritless "corporation sole" argument. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

ISSUE

Whether a taxpayer may exclude income from taxation based on the argument that the taxpayer's income belongs to a

"corporation sole" created by the taxpayer for the purpose of avoiding taxes on the taxpayer's income.

FACTS

A "corporation sole" is a corporate form authorized under certain state laws to enable *bona fide* religious leaders to hold property and conduct business for the benefit of the religious entity. A number of individuals are promoting the use of these entities to avoid taxes on income and conceal the taxpayer's assets from tax collection. Participants in this scheme apply for incorporation under the pretext of being an official of a church or other religious organization or society. Participants then are provided with a state identification number that can be used to open financial accounts. Participants claim that their income is exempt from federal and state taxation because this income belongs to the corporation sole, which is claimed to be a tax exempt organization described in section 501(c)(3) of the Internal Revenue Code. Participants may further claim that because the taxpayer's assets are held by the corporation sole, the taxpayer is not subject to collection actions for the payment of personal federal or state income taxes or for the payment of other obligations, such as child support.

LAW AND ANALYSIS

A valid corporation sole enables a *bona fide* religious leader, such as a bishop or other authorized church or other religious official, to incorporate under state law, in his capacity as a religious official. See, e.g., *Berry v. Society of Saint Pius X*, 69 Cal. App. 4th 354 (1999) ("One purpose of the corporation sole is to insure [sic] the continuation of ownership of property dedicated to the benefit of a religious organization which may be held in the name of its titular head."). A corporation sole may own property and enter into contracts as a natural person, but only for the purposes of the religious entity and not for the individual office holder's personal benefit. Title to property that vests in the office holder as a corporation sole passes not to the office holder's heirs, but to the successors to the office by operation of law. A legitimate corporation sole is designed to ensure continuity of ownership of property dedicated

to the benefit of a legitimate religious organization.

A taxpayer cannot avoid income tax or other financial responsibilities by purporting to be a religious leader and forming a corporation sole for tax avoidance purposes. The claims that such a corporation sole is described in section 501(c)(3) and that assignment of income and transfer of assets to such an entity will exempt an individual from income tax are meritless. Courts repeatedly have rejected similar arguments as frivolous, imposed penalties for making such arguments, and upheld criminal tax evasion convictions against those making or promoting the use of such arguments. See, e.g., *United States v. Heineman*, 801 F.2d 86 (2d Cir. 1986) (upholding conviction for promoting use of purported church entities to avoid taxes); *United States v. Adu*, 770 F.2d 1511 (9th Cir. 1985) (upholding conviction for aiding and assisting in the preparation and presentation of false income tax returns with respect to false charitable contribution deductions to same type of purported church entities involved in *Heineman*); *Svedahl v. Commissioner*, 89 T.C. 245 (1987) (sanctioning taxpayer for using contributions to purported church entities similar to those involved in *Heineman* to shield income and pay personal expenses).

CIVIL AND CRIMINAL PENALTIES

In addition to having to pay the actual tax due plus statutory interest, individuals who claim tax benefits on their returns based on a "corporation sole" scheme or other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$500 penalty under section 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to

5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return prepared by an income tax return preparer who knew or should have known that the taxpayer's argument was frivolous (or \$1,000 for each return where the return preparer's actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

A taxpayer cannot use a corporation sole as a means to exclude the taxpayer's income from taxation. Taxpayers attempting to reduce their federal tax liability by taking frivolous positions based on this argument will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those taxpayers also may face criminal prosecution. The Service also will determine appropriate civil penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons also may face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7950 (not a toll-free call).

Section 6662.—Imposition of Accuracy-Related Penalty

Frivolous tax returns; meritless “claim of right” arguments. This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with frivolous tax schemes, that there is no “claim of right” doctrine that permits an individual to take the position that either the individual or the individual's income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who make frivolous “claim of right” arguments to evade tax.

Rev. Rul. 2004-29

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by taking the position that either they or their incomes are not subject to tax based on what they describe or refer to as a “claim of right.” The Service also is aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on this argument. Some promoters may be marketing a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with this scheme, that there is no “claim of right” doctrine that permits an individual to take the position that either the individual or the individual's income is not subject to federal income tax. This argument has no merit and is frivolous. Section 1341 (“Computation of tax where taxpayer restores substantial amount held under claim of right”) of the Internal Revenue Code applies only when a taxpayer properly reports an amount of income in one taxable year and later repays all or a portion of that same amount in a later taxable year because the taxpayer, in fact, did not have an unrestricted right to that income.

The Service is committed to identifying taxpayers who attempt to avoid their tax obligations by taking frivolous positions, such as frivolous positions based on

a meritless “claim of right” argument. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

ISSUE

Whether section 1341, relating to amounts “held under claim of right,” allows an individual to reduce his or her federal income tax liability with respect to an item that was not included in gross income for a prior taxable year.

FACTS

Individual taxpayer A has gross income for taxable year 1. A claims deductions that equal or exceed A's gross income on A's individual income tax return for taxable year 1. A's claimed deductions may appear on various places on the return. For example, A may claim the deductions: (i) on Schedule A as compensation for personal labor; (ii) on Schedule C as a cost of A's labor; or (iii) on other schedules or elsewhere on A's return. Alternatively, A simply may not report all or some of A's gross income on A's return. Although the specific nature of A's “claim of right” argument for the position taken on the return may vary, A's position generally is that under a “claim of right,” either A or A's income, or both, are not subject to federal income taxes.

No portion of A's claimed deductions, or the amount of A's gross income not reported on the return, was included in A's gross income in any prior taxable year.

LAW AND ANALYSIS

Section 1341 governs the computation of income tax if: (i) an amount of income was included in a taxpayer's gross income in a prior year(s) because it appeared that the taxpayer had an unrestricted right to such item; and (ii) a deduction exceeding \$3,000 is allowable in the current taxable year because, after the close of such prior taxable year, it is established that the taxpayer did not have an unrestricted right to all or a portion of such item of income. There is no "claim of right" doctrine under U.S. law, including the Internal Revenue Code, that permits an individual to take the position that either the individual or the individual's income is not subject to federal income tax.

Individuals such as Taxpayer A who make meritless "claim of right" arguments do not purport to have repaid amounts previously reported as income, but instead simply claim that either they or their incomes are not subject to tax. In many respects, the so-called "claim of right" argument being made by these taxpayers is no different than the argument that some taxpayers have made that compensation for personal services is not subject to taxation. Courts repeatedly have rejected these types of arguments as frivolous and have penalized taxpayers who make these types of arguments. *See, e.g., Stelly v. Commissioner*, 761 F.2d 1113, 1115 (5th Cir. 1985) (finding that the argument that taxing wage and salary income is unconstitutional because compensation for labor is an even exchange is obviously frivolous); *Abrams v. Commissioner*, 82 T.C. 403, 413 (1984) (rejecting argument that wages are not subject to the imposition and collection of tax as frivolous and groundless and imposing a \$5,000 penalty under section 6673).

CIVIL AND CRIMINAL PENALTIES

The Service will disallow deductions or other claimed tax benefits, including the exclusion of income, based on frivolous "claim of right" arguments. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on this and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which

is equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$500 penalty under section 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return prepared by an income tax return preparer who knew or should have known that the taxpayer's argument was frivolous (or \$1,000 for each return where the return preparer's actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

Any claim that a taxpayer can use a "claim of right" argument to reduce the taxpayer's federal income tax liability with respect to any item not included in gross income for a prior tax year is frivolous. Taxpayers attempting to reduce their federal tax liability by taking frivolous positions based on this argument will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those taxpayers also may face criminal prosecution. The Service also will determine appropriate civil pen-

alties against persons who prepare frivolous returns or promote frivolous positions, and those persons also may face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7950 (not a toll-free call).

Frivolous tax returns; "reparations tax credit." This ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with tax schemes, that there is no "reparations tax credit" that permits an individual to take the position that the individual based on certain classifications is entitled to a large refund the individual would not otherwise receive. The ruling also describes many of the possible civil and criminal penalties that apply to people who claim refunds or other tax benefits on their returns based on frivolous reparations tax credits.

Rev. Rul. 2004-33

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by taking the position that they are entitled to a "reparations tax credit" or other similarly named credit because they are a member of a group or class based on race, ancestry, ethnicity, gender or other classification. Common examples of the purported reparations tax credit that have been promoted include the African-American reparations credit, the Black Heritage tax credit, and the Native American reparations credit. The Service also is aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on this argument. Some promoters may be marketing a package, kit, or other materials that claim to show taxpayers how they can receive large refunds based on this claim, or how taxpay-

ers can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with these schemes, that there is no reparations tax credit that entitles an individual to a refund of tax or to any other tax benefit, such as a credit against tax liability. This position is frivolous and has no merit. Although the Internal Revenue Code does allow special tax treatment for charitable organizations described in section 501(c)(3) that may help individuals who are needy or otherwise distressed and who are part of a general class of charitable beneficiaries, there is no U.S. law that allows for a reparations tax credit.

The Service is committed to identifying taxpayers who attempt to avoid paying income tax by taking frivolous positions, such as claiming a reparations tax credit. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether a court injunction should be sought to halt such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

DISCUSSION OF REPARATIONS TAX CREDIT SCHEME

Participants in the reparations tax credit scheme typically file individual income tax returns that correctly report the taxpayers' income, tax liability, and income tax withholding, but claim reparations tax credits in amounts that typically exceed their tax liabilities to reduce taxes that otherwise are owed and request refunds of purported overpayments of withheld taxes

or excess refundable credits. Participants often claim the reparations tax credit either on Form 2439, *Notice to Shareholder of Undistributed Long-Term Capital Gains*, identifying a fictitious regulated investment company or real estate investment trust, or as a withholding credit, Earned Income Credit, investment tax credit or another similar credit.

No law, including the Internal Revenue Code, allows taxpayers to claim a reparations tax credit or any other similarly-named credit. Courts repeatedly have rejected reparations tax credit claims as frivolous and penalized taxpayers making these claims and promoters and return preparers who assist taxpayer in making these frivolous claims. *See, e.g., United States v. Bridges*, 86 A.F.T.R.2d (RIA) 5280 (4th Cir. 2000) (rejecting as frivolous the non-existent "Black Tax Credit" and upholding conviction for aiding and assisting the preparation of false tax returns); *United States v. Haugabook*, 2002 U.S. Dist. LEXIS 25314 (M.D. Ga. 2002) (ordering a permanent injunction against a promoter prohibiting the preparation of returns or other documents claiming a tax credit for slavery reparations or other similar frivolous credits and requiring that the promoter place an advertisement in the local newspaper declaring that there are no such tax credits); *United States v. Mims*, 2002 U.S. Dist. LEXIS 25291 (S.D. Ga. 2002) (ordering a permanent injunction against a promoter prohibiting the preparation of returns or other documents claiming a tax credit for slavery reparations or other similar frivolous credits); *United States v. Foster*, 2002-2 U.S.T.C. (CCH) ¶ 50,785 (E.D. Va. 2002) (holding "no provision of the Internal Revenue Code allows for a tax credit for slavery reparations" and ordering a permanent injunction prohibiting the preparation of returns or refund claims based on a "fabricated tax credit for slavery reparations").

CIVIL AND CRIMINAL PENALTIES

The Service will disallow credits or refunds based on a reparations tax credit and will seek to recover any refund erroneously made to a taxpayer based on a reparations tax credit. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on this and other frivolous

arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a \$500 penalty under section 6702 for filing a frivolous return; and (4) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return prepared by an income tax return preparer who knew or should have known that the taxpayer's argument was frivolous (or \$1,000 for each return where the return preparer's actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

Any claim that a taxpayer is entitled to a reparations tax credit or a refund or other tax benefit based on a reparations tax credit is frivolous. Taxpayers attempting to reduce their federal tax liability by taking frivolous positions based on this argument will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those tax-

payers may also face criminal prosecution. The Service also will determine appropriate civil penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons may also face criminal prosecution. Promoters and others who assist taxpayers in engaging in

these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Proce-

dure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7800 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Common Mistakes on Tax Returns

Notice 2004-13

The purpose of this notice is to alert taxpayers about common mistakes made by individuals while preparing their federal income tax returns. These mistakes may result in taxpayers failing to fully pay their correct tax liabilities. In addition, these mistakes may result in delays in processing returns and receiving any refunds. Taxpayers should carefully read all the instructions to the tax forms and schedules and review their entire return before filing. In addition, e-filing, either through the Service's Free File Program at www.irs.gov or through a tax professional, will help reduce errors and speed refunds. Taxpayers who e-file and use direct deposit will receive their refunds in as little as two weeks.

Additional taxpayer resources, including answers to frequently asked questions, also can be found at www.irs.gov. Taxpayers can learn more about common mistakes and find an error checklist on page 60 of the Instructions to the 2003 Form 1040 Federal Income Tax Return; this information also is available at TeleTax Topic 303 on the internet at www.irs.gov and from the toll-free TeleTax number, 1-800-829-4477.

1. Choosing the wrong filing status. Taxpayers should confirm that the filing status (*i.e.*, single, married filing jointly, married filing separately, head of household, qualifying widower) selected on the return is correct. For example, taxpayers often incorrectly claim "head of household" filing status without meeting the requirements for that status. In addition to delaying the processing of the return and any refund, designating the wrong filing status on a return also may affect a taxpayer's eligibility for the Earned Income Credit. The Instructions to the 2003 Form 1040 provide detailed information to assist taxpayers in choosing their correct filing status.

2. Failing to include or using incorrect social security numbers. The names and social security numbers for the taxpayer, taxpayer's spouse, dependents, and qualifying children for the Earned Income

Credit or Child Tax Credit must be included on the return exactly as they appear on the social security cards.

3. Failing to use the correct forms and schedules. Taxpayers should review the instructions to all applicable forms and schedules to be sure they have correctly used, and accurately completed, each form or schedule.

4. Failing to sign and date the return. Taxpayers must sign and date their return under penalties of perjury. If the return is not signed, it will not be accepted as filed by the Service. Both spouses must sign a joint return.

5. Claiming ineligible dependents. Taxpayers may claim a person as a dependent only if that person meets the legal definition of a dependent. Taxpayers should consult the Instructions to Form 1040 to confirm whether a person qualifies as a dependent. Each dependent must have a valid social security number, which must be included on the tax return. The failure to include a dependent's name and social security number, or claiming an ineligible dependent, may result in an underpayment of tax and/or a denial of the Earned Income Credit.

6. Failing to file for the Earned Income Credit. Taxpayers should review carefully the eligibility requirements for the Earned Income Credit, including income limits, before filing returns. For example, many military families may qualify for the Earned Income Credit because supplemental payments and combat pay are exempt from the income calculations. Detailed instructions for claiming and computing the Earned Income Credit are contained in the Instructions to the Form 1040, Fact Sheet 2004-8, in Publication 596 and through links at 1040 Central at www.irs.gov.

7. Improperly claiming the Earned Income Credit. Taxpayers must have a qualifying amount of earned income to claim the Earned Income Credit. For example, a taxpayer whose sole income is from the receipt of disability payments does not have qualifying earned income and is ineligible for the Earned Income Credit. Detailed instructions for claiming and computing the Earned Income Credit are contained in the Instructions to the Form 1040, Fact Sheet

2004-8, and Publication 596, and through links at 1040 Central at www.irs.gov.

8. Failing to pay and report domestic payroll taxes. Taxpayers employing household workers, such as a house cleaner, an in-home caregiver, or a nanny, must pay and report payroll taxes for those individuals where the payments exceed certain threshold amounts. Failure to pay and report payroll taxes may result in the assessment of additional tax due, interest on the unpaid amounts, and penalties. The Instructions to the Form 1040, Publication 926 (*Household Employer's Tax Guide*), and Publication 15-A (*Employer's Supplemental Tax Guide*) contain detailed information to assist taxpayers in determining whether an individual providing household help is a household employee for whom the taxpayer must pay and report payroll taxes.

9. Failing to report income because it was not included on a Form W-2, Form 1099 or other information return. Taxpayers must report all income, even if the income was not reported on a third-party reporting statement such as a Form W-2, Form 1099, or other similar statement. Failure to report all income may result in the assessment of additional tax due, interest on the unpaid amounts, and penalties.

10. Treating employees as independent contractors. Employers may not treat an employee as an "independent contractor" to avoid paying and reporting payroll taxes. Employers who improperly treat an employee as an independent contractor may be liable for additional tax due, interest on the unpaid amounts, and penalties. Publication 15-A (*Employer's Supplemental Tax Guide*) contains detailed information to assist taxpayers in determining whether an individual is an employee or an independent contractor.

11. Failing to file a return when due a refund. Taxpayers must file a return to claim a refund of withheld taxes when a refund is due. Taxpayers will forfeit refunds of withheld tax if a return requesting a refund is not filed within three years of the due date.

12. Failing to check liability for the alternative minimum tax. Taxpayers should determine whether the alternative minimum tax, or AMT, applies. If the taxpayer

is liable for AMT, the Service may reduce or deny a requested refund or may assess any additional tax due, interest on the unpaid amounts and penalties.

This notice was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this notice, contact that office at (202) 622-7800 (not a toll-free call).

Frivolous Arguments to Avoid

Notice 2004-22

SECTION 1 INTRODUCTION

As April 15 approaches, taxpayers are reminded to steer clear of tax-avoidance schemes that purportedly reduce or eliminate taxes. If an idea to save on taxes seems too good to be true, it probably is.

Tax-avoidance schemes are based on frivolous arguments that the Service and the federal courts have repeatedly rejected. These schemes typically are sold by promoters for a substantial fee, and may be sold over the Internet, through advertisements in newspapers and magazines, at conferences and seminars (including conferences for professional groups such as doctors or dentists), and through recommendations of friends or acquaintances who have learned about these schemes.

Section 2 of this notice sets out many of the most common frivolous arguments used by these tax-avoidance schemes. The Service is committed to identifying taxpayers who attempt to avoid their tax obligations by using schemes based on these and other frivolous arguments. Frivolous returns and other similar documents submitted to the Service are processed through its Frivolous Return Program. The Service also reviews other non-return documents making frivolous arguments submitted by taxpayers, such as correspondence, to determine whether these individuals have filed required tax returns and paid all taxes due for previous years.

Section 3 of this notice identifies potential civil and criminal penalties. Taxpayers who engage in tax-avoidance schemes will be liable for unpaid taxes and interest. In addition, the Service will impose civil and criminal penalties against taxpayers

where appropriate. The Service also will determine appropriate penalties against persons who promote these schemes and who prepare frivolous returns based these schemes.

SECTION 2 COMMON FRIVOLOUS ARGUMENTS

This section sets out many common frivolous arguments used by taxpayers to avoid or evade tax.

- ***“The 16th Amendment is invalid because it contradicts the original Constitution, and it was not properly ratified.”*** The 16th Amendment, which authorizes the income tax, was properly ratified and is valid.
- ***“A taxpayer can make a ‘claim of right’ to exclude the cost of his labor from income.”*** There is no “claim of right” doctrine under any federal law, including the Internal Revenue Code, that permits a taxpayer to deduct or exclude the value of his labor.
- ***“Only income from a foreign source is taxable under section 861.”*** Sections 861-865 do not exclude income from tax. In particular, nothing in these sections or the Treasury regulations provides that only income earned from certain foreign sources is subject to U.S. tax.
- ***“I am not a ‘citizen’ or a ‘person’ within the meaning of the Internal Revenue Code.”*** A citizen of each of the 50 States (e.g., New York or California) of the United States and the District of Columbia is also a citizen of the United States.
- ***“Citizens of States, such as New York, are citizens of a foreign country and therefore not subject to tax.”*** Section 911 permits a taxpayer to elect to exclude income from U.S. income tax only when the taxpayer earns income and resides outside the United States under the conditions and limitations set forth in that section. For purposes of section 911, States (e.g., New York or California), Commonwealths, and Territories (e.g., Johnston Atoll) of the United States are not foreign countries.
- ***“A taxpayer can escape income tax by putting assets in an offshore bank account.”*** A citizen or resident of the United States cannot use an offshore arrangement (such as a foreign bank or brokerage account, or a credit card issued by a foreign bank) to avoid his tax obligations. In addition, taxpayers are required to disclose foreign financial accounts to the Treasury Department and may face civil and criminal penalties if they fail to do so.
- ***“A taxpayer can eliminate tax by establishing a ‘corporation sole.’”*** A taxpayer cannot avoid income tax by establishing a corporation sole for the purpose of avoiding tax on the taxpayer’s income. A corporation sole may be used only by a *bona fide* religious leader for specific, limited purposes relating to the religious leader’s office.
- ***“A taxpayer can place all of his assets in a trust to escape income tax while still retaining control over those assets.”*** A taxpayer who places assets in a trust but retains certain powers or interests over the assets, including the power to control the beneficial enjoyment of the assets, is treated as the owner of the assets and is subject to tax on the income from those assets.
- ***“A taxpayer can deduct any amount paid to maintain his household by establishing a home business.”*** Business expenses, including expenses related to a home-based business, are not deductible unless the expenses relate to a *bona fide*, profit-seeking business. Promoters of home-based business schemes improperly encourage taxpayers to claim household expenses as business deductions although the purported home-business used in these schemes is not a *bona fide* trade or business.
- ***“Nothing in the Internal Revenue Code section imposes a requirement to file a return.”*** Section 6011 expressly authorizes the Service to require, by Treasury regulation, the filing of returns. Section 6012 identifies persons who are required to file income tax returns. Under Treasury regulations, taxpayers who receive more

than the statutory minimum amount of gross income must file returns. Taxpayers also are required to pay any tax owed.

- **“Filing a tax return is ‘voluntary.’”** Some people mistake the word “voluntary” for “optional” — but filing a tax return is not optional for those who meet the law’s requirements. The word “voluntary,” as used in IRS publications, refers to the fact that the U.S. tax system is a voluntary *compliance* system, which means that taxpayers themselves determine the correct amount of tax and complete the appropriate returns, rather than have the government determine tax for them. For those who do not comply with their tax obligations, the tax law authorizes various compliance measures.
- **“Because taxes are voluntary, as an employer, I don’t have to withhold income or employment taxes from my employees.”** Every taxpayer is responsible for completing and filing required returns and paying the correct amount of tax. An employer is required by law to withhold income and employment taxes from salary and wages paid to employees. Employers also must deposit the amounts withheld with the IRS.
- **“A taxpayer can refuse to pay taxes if the taxpayer disagrees with the government’s use of the taxes it collects.”** No law, including the Internal Revenue Code, permits a taxpayer to avoid or evade tax obligations on grounds that the taxpayer does not agree with the Government’s past or possible future use of the taxes collected.
- **“A taxpayer can avoid tax by filing a return that reports zero income and zero tax liability.”** All taxpayers who receive more than the statutory minimum amount of gross income must file returns and pay tax. No law, including the Internal Revenue Code, permits a taxpayer who has received wage and other income to file a return with zero income and zero tax liability.
- **“A taxpayer can escape income taxes or the tax system by filing a set of documents in lieu of a tax return.”** Tax-

payers must file income tax returns using the forms prescribed by the Service. No law, including the Internal Revenue Code, permits a taxpayer to file a document or series of documents to remove himself from the income tax system.

- **“A taxpayer can avoid tax by filing a return with an attachment that disclaims tax liability.”** A return with an attached disclaimer of tax liability is not a valid tax return under the law. Filing a disclaimer of tax may result in penalties for failure to file in addition to other applicable civil and criminal penalties.
- **“A taxpayer can file a return with an altered penalties of perjury statement to generate a tax refund.”** Alterations to an income tax return or to the penalties of perjury statement may nullify a return. Filing an altered document may result in penalties for failure to file in addition to other applicable civil and criminal penalties.
- **“Certain taxpayers can claim a ‘reparations tax credit’ to right wrongs done in the past.”** No law, including the Internal Revenue Code, permits a “reparations tax credit.”
- **“By purchasing equipment and services for an inflated price, a taxpayer can use the Disabled Access Credit to reduce tax or generate a refund.”** The Disabled Access Credit, which is limited to specific medical equipment, may only be claimed for amounts actually paid by a taxpayer. Promoters of this scheme improperly offer to sell equipment or services at highly inflated prices in order to generate a large credit. Taxpayers participating in this scheme, however, ultimately are not required to pay, and do not pay, the entire price stated in the sales contract.
- **“A taxpayer can deduct the amount of Social Security taxes under section 3121 that he paid and get a refund of those taxes.”** Section 3121 does not exclude wages from taxation and does not authorize a refund of Social Security taxes paid.

- **“A taxpayer may sell (or purchase) the right to use dependents in order to increase the amount of EIC claimed.”** A taxpayer may not purchase or sell the right to use additional dependents for purposes of the Earned Income Credit. To be claimed as a dependant, a child must be a qualifying child under the Earned Income Credit rules.

The Service and the federal courts also have repeatedly rejected variations of these arguments as well as numerous other tax avoidance schemes and frivolous arguments used by taxpayers to avoid or evade taxes.

SECTION 3 CIVIL AND CRIMINAL PENALTIES

Civil and criminal penalties may apply to taxpayers who make frivolous arguments. Potentially applicable civil penalties include: (1) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; (2) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes the taxpayer should have paid; (3) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (4) a \$500 penalty under section 6702 for filing a frivolous return; and (5) a penalty of up to \$25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers who engage in tax-avoidance schemes also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; and (2) willful failure to file a return under section 7203 for which the penalty is a fine of up to \$25,000 and imprisonment of up to one year; and (3) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote tax-avoidance schemes and those who assist taxpayers in claiming tax benefits based on a tax-avoidance scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return prepared by an income tax return preparer who knew

or should have known that the taxpayer's argument was frivolous (or \$1,000 for each return where the return preparer's actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years for assisting or advising about the preparation of a false return or other document under the internal revenue laws. Promoters and others who assist

taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

SECTION 4 ADDITIONAL INFORMATION

Other information about frivolous tax positions is available on the Service website at www.irs.gov.

This notice was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative

Provisions and Judicial Practice Division. For further information regarding this notice, contact that office at (202) 622-7800 (not a toll-free call).

Part IV. Items of General Interest

Foundations Status of Certain Organizations

Announcement 2004-17

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

18th Ward Athletic Association,
Reading, PA
190 Cultural Enrichment Trust,
Penn Valley, PA
Abundant Life Bible Study, Canton, OH
AC Instrumental Booster Club, Inc.,
Atlantic City, NJ
Adirondack Kitchen Project, Inc.,
Hamilton, NY
Advantage Ephrata Task Force, Inc.,
Ephrata, PA
Africa 2000 Productions, Purcellville, VA
African Solidarity Foundation, Inc.,
New York, NY
Afro American Club of Roch NY, Inc.,
Rochester, NY
Agape Community Health Corporation,
Sorento, FL
Ahepa Monroe Chapter 75 Nonprofit
Housing Corp., North Brunswick, NJ
Aiding Communities Through Service
Acts, Inc., Philadelphia, PA
Akita Rescue of WNY, Inc., Buffalo, NY
Akram Research & Educational
Foundation, Inc., Windsor, NJ
Allison Stohner Scholarship Foundation,
Inc., Cherry Hill, NJ
American Association of Complimentary
Medicine, Inc., Sleepy Hollow, NY

American Asthma Association,
New York, NY
American Community Development
Fund, Inc., Columbus, OH
American Recovery Center, Fairfax, VA
American Youth Dance Theater
Foundation, Inc., New York, NY
Angel Hearts, Incorporated,
Williamsville, NY
Animal Care Association, Inc., SPCA,
Scranton, PA
Antioch Community Corp.,
New Brunswick, NJ
Aptitudes for Living Institute,
St. George, UT
Art for Peace, Ft. Washington, PA
Association of the Brethren in Ways of
Jesus Christ, Kingston, PA
Atlantic Charitable Foundation, Inc.,
Atlantic City, NJ
Atlantic City Rights of Passage, Inc.,
Atlantic City, NJ
Auburn Towers Resident Council,
Pittsburgh, PA
Audubon Housing Development Fund
Corporation, New York, NY
Barbaras Christmas Foundation, Ilion, NY
Bartenders Foundation, Inc.,
Basking Ridge, NJ
Be Attitudes Educational Foundation,
Inc., Toms River, NJ
Beekman Hill Association, Inc.,
New York, NY
Bergen County Wellness Self-Awareness
& Recovery Group, Paramas, NJ
Best Practices New Jersey, Inc., Bloustein
School 5th Floor, New Brunswick, NJ
Bethany-Development Outreach
Housing Development Fund Corp.,
New York, NY
Bethlehem Community Development
Corporation, East Orange, NJ
Better World Charitable Foundation, Inc.,
Englewood Cliffs, NJ
Bhagwan Vardham Global Education
Fund, Germantown, MD
Birth of Unique Individuals Lessens
Delinquency, Philadelphia, PA
Boaters Against Drunk Driving, Inc.,
Battle Creek, MI
Boston Terrier Rescue Southwest,
Desoto, TX
Boyle Childrens Cancer Foundation, Inc.,
Greenwich, CT

Boys and Girls Club of Jay Oklahoma,
Inc., Oaks, OK
Breastfeeding Education and Support
Network of New York City, Inc.,
New York, NY
Bridge-Logos International Trust, Inc.,
Gainesville, FL
Bronx Mass Ministries, Inc., Bronx, NY
Brookland Manor Brentwood Village
Residents Association, Washington, DC
Burns Heights Tenant Council,
Duquesne, PA
Calder Race Course Education
Foundation, Inc., Miami, FL
California Safe Boating Foundation,
Long Beach, CA
Calvin Duncan Ministries, Inc.,
Richmond, VA
Camp Oink, Inc., Ojai, CA
Cancer Services of Crawford County,
Meadville, PA
Capital City Teen Production,
Richmond, VA
Capital District Coalition for Crime
Victims Rights, Inc., Albany, NY
Cardiology Medical Education &
Research Fund, Pittsburgh, PA
C A R E United Methodist Outreach,
Mcarthur, OH
Carecom, Inc., New York, NY
Caring and Sharing Outreach Ministry,
Chesapeake, VA
Carrington House Corporation,
Baltimore, MD
Catalyst Association, Incorporated,
Albany, NY
Catholic Leadership Conference,
Plymouth Meeting, PA
Center El Centro, Gettysburg, PA
Center for Cosmopolitan Culture, Inc.,
Philadelphia, PA
Center for Ecumenical Spirituality, Inc.,
Orchard Park, NY
Center for the New Internationalism, Inc.,
New York, NY
Center of Healing, Inc., Gibsonville, NC
Center of Hope, Inc., Phillipsburg, NJ
Central New York Behavioral Health
Consortium, Inc., Syracuse, NY
Central New York Sickle Cell Disease
Association, Syracuse, NY
Central Virginia Chronic Fatigue
Syndrome & Fibromyalgia Association,
Inc., Charlottesville, VA

Centre County Family Ties, Inc., Belle Fort, PA
 C E R C, Inc., E. Rutherford, NJ
 CFIDS United, Inc., Amherst, NY
 Chaplain Ministry Services, Inc., Americus, GA
 Chelten Christian Crusade for All People, Inc., Philadelphia, PA
 Chester Education Association Philanthropic Fund, Inc., Chester, NJ
 Chester Youth Initiative, Inc., Chester, PA
 Chesterfield Aging & Disabled, Inc., Chesterfield, VA
 Child Search, Inc., Boise, ID
 Childrens Cultural Center at Red Bank, Inc., Red Bank, NJ
 Childrens Educational Foundation, Inc., Kenilworth, NJ
 Childrens Home Workshop, Inc., Holley, NY
 Childs Voice, Inc., NY State Grandparents Rights Organization, Kinderhook, NY
 Chosen Vessels, Philadelphia, PA
 Christian Education Scholarship Fund, Williamsport, PA
 Church Health Network, Inc., Irwin, OH
 Cincinnati Street Railway, Inc., Cincinnati, OH
 Circus Millennia, Arlington, VA
 City of Refuge Ministry, Erie, PA
 Clear View Community Development Corporation, Newark, NJ
 Clinton Avenue Housing Development Fund Company, Inc., Albany, NY
 Clinton Hill Congregations United, Inc., Newark, NJ
 Coalition of Independent Artist & Artisans, Williamsport, PA
 Community Circle of Friends, Inc., Ellenville, NY
 Community Compass, Inc., Toms River, NJ
 Community Fire Company of Leonardo, Inc., Red Bank, NJ
 Community Resources for Achievement, Inc., Willow Grove, PA
 Community Washington House Corporation, E. Alexandria, VA
 Courthouse Chamber Orchestra, Inc., Moon, VA
 C R A V E Cops Racing Against Violence Through Education, Trenton, NJ
 Crossing Limits, Inc., Pittsburgh, PA
 Davids Youth Center for Adolescent Health Education, East Orange, NJ
 Delta Community Non-Profit Corporation, Wrightstown, NJ
 Discover Oasis, Poughkeepsie, NY
 Dover Housing Finance Corporation, Dover, NJ
 Duke Ellington Legacy, Inc., New York, NY
 Dunbar Township Science Center, Connellsville, PA
 Earthbound Land Trust, Incorporated, Syracuse, NY
 East Rochester Youth Activity Center, Inc., E. Rochester, NY
 Eddie Werner Memorial Foundation, Inc., Jackson, NJ
 Educational and Scientific Trust of Simon Kramer Institute of Therapeutic, New Phila, PA
 Eglise Sainte Marie-Madeleine, Philadelphia, PA
 Elmwood House Foundation, Inc., Cherry Hill, NJ
 Empire State Forestry Foundation, Inc., Albany, NY
 Endless Horizons Childrens Discovery Center, Inc., Middlesex, NJ
 Environment Equity Information Institute, Hampton, VA
 Ephesian House, Inc., Ravenna, NY
 Face It-South Bend, Berrien Springs, MI
 Family and School Association of Chews School FSA, Blackwood, NJ
 Family Hearing Loss Support Network, Inc., Kennett Square, PA
 Family Home Care of Rochester and Monroe County, Inc., Rochester, NY
 Family Life to the Community, Inc., Portsmouth, VA
 Feed My Sheep, Pittsburgh, PA
 Feral to Friendly Felines, Inc., Phillipsburg, NJ
 Fidelio Opera Company, Wilkes Barre, PA
 F I N D of Northern Virginia, Inc., Oakton, VA
 Florence Bowser Educational Fund, Inc., Newport News, VA
 Flower of Carmel, Inc., Westwood, NJ
 Flying Vision Mission, Inc., Saranac Lake, NY
 Foundation for East Amwell Community Education, Inc., Ringoes, NJ
 Foundation for Living Organ Donation Education, Inc., Newtown, PA
 Foundation for Psychoanalytic Thought, Absecon, NJ
 Foundation for Research and Conservation of Andean Monuments, New York, NY
 Foundation for Youth Ice Hockey Association of Fair Lawn, Inc., Paramus, NJ
 Franklin St. Johns Community Center, Inc., Newark, NJ
 Frederick Douglass Institute, Alexandria, VA
 Friends of Bandy Field, Richmond, VA
 Friends of Bosnia and Herzegovina Fobah, Washington, DC
 Friends of Lesc, Inc., New York, NY
 Friends of the Fayetteville Free Library, Fayetteville, NY
 Friends of the Homeless Animals of Trenton-Mercer County, Inc., Princeton, NJ
 Friends of the Jewish Museum Berlin, Princeton, NJ
 Friends of Ujima, Inc., Mount Vernon, NY
 Friendship World Foundation, New York, NY
 Gaynews Network, Washington, DC
 Generation X-Cel Youth & Family Services, Chesterfield, VA
 George Beach Foundation, Philadelphia, PA
 Giles County Youth Adult Partnership, Pearisburg, VA
 Gill Foundation for Children, Inc., Rockville, MD
 Ginnys House, Inc., West Orange, NJ
 Gloucester City Community Playground, Inc., Cherry Hill, NJ
 Gods Second Blessing Thrift Shop, Allentown, PA
 Good Samaritans of the Knights Templar Foundation, Alexandria, VA
 Good Shepherd Community Development Corporation, Willingboro, NJ
 Gordon B. Hancock Memorial Community Development and Housing Corp., Richmond, VA
 Greater Rochester Harvest Crusade, Inc., Rochester, NY
 Guardian Angel, Nutley, NJ
 H A A P P Y, Inc., No. Arlington, NJ
 Habitate Newark Homeowners & Neighborhood Community Improvement, Newark, NJ
 Hackensack River Festival, Inc., Ridgefield, NJ
 Harbor of Refuge, Inc., New York, NY
 Harger Foundation, Hamilton, NJ
 Harlem Historical Society, New York, NY
 Harmonious Volunteer Center, Inc., Philadelphia, PA
 Health is Wealth Foundation, Inc., Montgomery Village, MD
 Hebrew Passover Relief Society, Inc., Roseland, NJ

Helderberg Safe Haven, Inc.,
Altamont, NY

Help for the Children, Inc., Richmond, VA

Helping Other People Through
Empowerment, Inc., Baltimore, MD

Heritage Hunters of Saratoga County New
York, Saratoga Springs, NY

Hero Foundation, Bryn Mawr, PA

High School Network of New Jersey,
Incorporated, Morganville, NJ

Highlands Community Development
Corporation, West Milford, NJ

HIV AIDs Survivors Guilt Awareness,
Inc., Binghamton, NY

Hornell Elementary Parent Teacher
Organization, Hornell, NY

Hudson Valley Aids Auction, Inc.,
Kingston, NY

Hudson Valley Bluegrass Association,
Highland, NY

In Limine, Inc., Ho Ho Kus, NJ

Innerfaith Performing Arts Center, Inc.,
Paterson, NJ

International Fund for Nonviolence,
Spencertown, NY

Jamaica Impact, Inc., Brooklyn, NY

Jersey City Affordable Housing Coalition,
Jersey City, NJ

Jersey City Religious Freedom Defense
Fund, Jersey City, NJ

Keep Elevating Yourself K E Y Project
Services, Inc., Pennsauken, NJ

Kidstown, Newark, NJ

Korean History Project, Incorporated,
Roanoke, VA

Ladies Auxiliary of the Sussex Fire
Department, Sussex, NJ

Lake Shore Youth Football, Inc.,
Derby, NY

Lakeshore Fire Department Auxiliary,
Fairview, PA

Lambda Theta Phi Latin Fraternity
Foundation, Inc., Union City, NJ

Lean On Me Little Tots Childrens
Coalition, Dorchester, MA

Legacy Foundation, New York, NY

Legacy Voices 2000, Annadale, VA

Liberty Outreach, Inc., Lynchburg, VA

Literacy Now, Inc., W. Berlin, NJ

Living Stones Ministries a NJ Nonprofit
Corporation, Medford, NJ

Livingston Junior Lancer Lacrosse
League, Inc., Livingston, NJ

Loaves & Fishes Job Training, Inc.,
Brooktondale, NY

Longport Life Guard Alumni Association,
Inc., Linwood, NJ

Mad River Chorales, Inc., Fayston, VT

Maggie Walker High School Renovation
Foundation, Richmond, VA

Main Street Marietta, Inc., Marietta, PA

Manna Tabernacle of Victory,
Incorporated, Lodi, NJ

Marshall Heights Youth Development
Program, Washington, DC

Maya Orchestra, Inc., Hawthorne, NJ

Mercyworks, Incorporated, Syracuse, NY

Messages to the Future Corp.,
Cranford, NJ

Metroeast, Inc., New York, NY

Metropolitan Equity Project, Inc.,
New York, NY

Michael L. Clancy Foundation,
Chatham, NJ

Minority Bhulua College Fund
Incorporation, Washington, DC

Miracles of God Project, Inc., Reston, VA

Mission Relief Services, Inc.,
Cortland, NY

Monticello High School Athletic Boosters
Club, Inc., Charlottesville, VA

Monticello High School Music Boosters,
Inc., Charlottesville, VA

More Perfect Union, Inc., New York, NY

Mount Ida Preservation Association,
Troy, NY

Mt. Sinai Center for Community
Enrichment, Inc., Briarwood, NY

Nami Sussex, Newton, NJ

National Center for Brownfields
Reclamation, Alexandria, VA

National Police K9 Foundation, Inc.,
Rhinebeck, NY

National Sports Training Foundation, Inc.,
Port Washington, NY

Nebula A Foundation for Educational
Enrichment, Philadelphia, PA

Network for Senior Service Professionals,
Inc., Shrewsbury, NJ

New-Ark Management Foundation, Inc.,
Brooklyn, NY

New Future Unlimited, Inc.,
Binghamton, NY

New Jersey Civil War Heritage
Association, Parsippany, NJ

New Jersey Herpetological Society, Inc.,
Brown Mills, NJ

New Jersey New York Football Coaches
Governors Bowl, Forked River, NJ

New Millennium Group of Western NY,
Inc., Buffalo, NY

New York Brigade, Inc., New York, NY

Newark Athletic Sports Association, Inc.,
Newark, NJ

Newark Community Concert Choir
C-O Metropolitan Baptist Church,
Newark, NJ

Newark Environmental Coalition, Inc.,
Newark, NY

Newburgh Rowing Club, Newburgh, NY

Niagara Frontier Veterinary Society Pet
Emergency Fund, Inc., Buffalo, NY

Noahs Ark Outreach, Inc., Piscataway, NJ

Nonprofit Vietnamese-American
Community Corporation of Middle &
Southern New Jersey, Trenton, NJ

Northeast Center for Spiritual Growth,
Inc., Schodack Lndg, NY

Northern Catskill Youth Association, Inc.,
Cairo, NY

Northgate 1 Tenant Association,
Camden, NJ

NPL Communications, Inc.,
East Orange, NJ

Nunda Preservation Association, Inc.,
Nunda, NY

Odyssey of Hope, Incorporated,
Adelphi, MD

Onondaga Breast Cancer Mapping
Project, Inc., Syracuse, NY

Opio Foundation, Boca Raton, FL

Opsail Philadelphia 2000, Jenkintown, PA

Orange Council on Race Relations, Inc.,
Orange, VA

Outreach 2000, Inc., Lattimore, NC

P Street Recreation, Inc., Washington, DC

Pan-African Foundation for Humanity
International, Richmond, VA

Pascack Valley PFO Scholarship Tr.,
Hillsdale, NJ

Peninsula Baseball Umpires Association,
Yorktown, VA

Pennington Court Tenants Assn., Inc.,
Newark, NJ

Pennsylvania Consumer Education
Project, Reading, PA

Peoples Community Development
Corporation, New Brunswick, NJ

Pequea Valley Youth Soccer Association,
Gap, PA

PIC-Protein Intolerant Children,
Harrisonburg, VA

Plainfield Coalition, Inc., N. Plainfield, NJ

Plum Creek Chamber Orchestra, Inc.,
Pittsburgh, PA

Police Stress Unit, Inc., Williamstown, NJ

Pond View Farms, Inc., Voorheesville, NY

Positive Drop-In Center, Wellsville, NY

Prayer Garden, Purcellville, VA

Pregnant With Cancer Support Group,
Inc., Buffalo, NY

Prescient Systems, Inc., Ithaca, NY

Prince George Economic Alliance,
 Prince George, VA
 Priority One Primates, Inc.,
 Niagara Falls, NY
 Project Hugs, Inc., Jersey City, NJ
 Project Playground Sponsored by
 Montville Kiwanis, Inc., Montville, NJ
 Quality Living for Families,
 Schenectady, NY
 Rafael Nieves Heart Foundation for
 Children, Silver Spring, MD
 Rapha Foundation, Fairfax, VA
 Rappahannock Area Alliance of Health
 & Wellness Professionals, Inc.,
 Fredericksburg, VA
 Recovery Awareness Foundation,
 Atlantic, VA
 Richie Ashburn Foundation, Blue Bell, PA
 Rittenhouse Center for Performing Arts of
 Norristown, Inc., Norristown, PA
 Roberto Clemente Memorial Committee,
 Paterson, NJ
 Rochester Junior Soccer Club,
 Rochester, NY
 Rupert Fund, Bryn Mawr, PA
 Sammy Davis Jr. Foundation, Inc.,
 New York, NY
 Save Our Future Action Coalition, Inc.,
 Vails Gate, NY
 Schafer Housing Development Fund
 Corporation, New York, NY
 Scott A. Curley Memorial Fund for the
 Symphony of Life, Cambridge, MA
 Second Baptist Community Development
 Corporation, Paterson, NJ
 Seeds for Needs, Inc., Philadelphia, PA
 Semper Audere, Inc., Bergenfield, NJ
 Seniors for Kids, Waterford, PA
 Sert Association, Inc., Caldwell, NJ
 Share a Dream, Fredonia, NY
 Sharespace Foundation, Los Angeles, CA
 Silver Spring Equine Rescue, Inc.,
 New Castle, VA
 Skyview Development Group, Inc.,
 Camden, NJ
 Smiles to Share, Inc., Tenafly, NJ
 Smooth & Easy Hand Dance Institute,
 Washington, DC
 Solid Foundation Family Learning Center,
 Inc., Trenton, NJ
 Something to Believe in Foundation,
 Morganville, NJ
 South Georgia Rails to Trails,
 Incorporated, Albany, GA
 South Louisiana Transportation,
 Ville Platte, LA
 Southeast Ohio Educational Assistance
 Foundation, Athens, OH
 Southern New Jersey Council for
 Parish-Congregational Health Support,
 Cape May Court House, NJ
 Sparta Educational Foundation, Inc.,
 Sparta, NJ
 Specialink Org, Cincinnati, OH
 Sports-Learning Foundation, Chicago, IL
 Springfield Hope Community
 Development Corporation,
 Springfield, OH
 Spruce Top Sanctuary, Thompson, PA
 St. Brendan Knights of Columbus
 Religious Education Laity Instruct,
 Hilliard, OH
 St. Francis Hughes Community
 Redevelopment Corporation,
 Hughes, AR
 St. Paul Amateur Sports Federation,
 Minneapolis, MN
 St. Theresa of Avila Foundation, Inc.,
 Wyckoff, NJ
 Stanley M. Klein Foundation, Inc.,
 New York, NY
 Starburst Foundation for Childrens
 Health, Inc., Montclair, NJ
 Steinbeck Unlimited, Inc., Salinas, CA
 Stephanie Powell Danse Ensemble, Inc.,
 Baltimore, MD
 Steward Ship, Inc., Lindenwold, NJ
 Stolzer Foundation, Inc.,
 New Brunswick, NJ
 Stone Harbor Parent Teacher Connection,
 Inc., Stone Harbor, NJ
 Student Business Incubator, Inc.,
 Moscow, ID
 Students for Life and Liberty,
 Chapel Hill, NC
 Suburban Soccer Club Liverpool,
 Chester, NJ
 Sundance Community Resource Center,
 Inc., Corinth, NY
 Susquehanna Trails Community
 Association, Delta, PA
 T & A Healthful Living Ltd.,
 Philadelphia, PA
 Tabernacle Economic Development, Inc.,
 Dorchester, MA
 Tabernacle of Faith Youth Center, Inc.,
 Camden, NJ
 Tallahassee Harambee Arts & Cultural
 Heritage Council, Inc., Tallahassee, FL
 Tasting Tao Center, Inc., Kaneohe, HI
 Taylor Adult and Youth Resident Council,
 Inc., Troy, NY
 T E A M Cure ALS Foundation, Inc.,
 Beaverton, OR
 Team Drop Dead Center Foundation, Inc.,
 Gunnison, CO
 Team Tampa Bay, Inc., St. Petersburg, FL
 Teen After School Club, Hamilton, NJ
 Temple Community Development
 Corporation of America, Piscataway, NJ
 Tender Dreams Cancer Foundation,
 Tacoma, WA
 Terranova, Inc., Water Mill, NY
 Texas Care Communities, Inc.,
 Pasadena, TX
 Theodoras Fund, Inc., Spring Valley, NY
 Tibetan Association of Santa Fe, Inc.,
 Santa Fe, NM
 Tigers-Girls A S A Fastpitch Organization,
 Inc., Hammonton, NJ
 Tilden Housing Development
 Corporation, Omaha, NE
 Timothy Healey Foundation, Inc.,
 Randolph, NJ
 Tom Bell Foundation, Inc., Rochester, NY
 Tomorrows Promise, Batesville, VA
 Total Surrender, Philadelphia, PA
 Totton Peters Communications, Inc.,
 Hershey, PA
 Town of Amenia Civic Renewal Corp.,
 Pawling, NY
 Tri-County Community Development
 Corporation, Inc., Miramar, FL
 Troup Haven, Inc., Lagrange, GA
 Twenty One Club, Irvington, NJ
 Twin County Sports Program, Inc.,
 Galax, VA
 Two By Two Ministries, Inc.,
 Arenzville, IL
 Uganda Childrens Fund, Inc.,
 Bowling Green, KY
 Ulster and Delaware Railroad Preservation
 Society, Inc., Glenford, NY
 Union-Liberty Community Arts Council,
 West Chester, OH
 United African Education Foundation,
 Philadelphia, PA
 United Nations African Mothers
 Association, Inc., New York, NY
 United Sisters Christian Womens
 Ministries, Latham, NY
 United States & China Foundation,
 New York, NY
 Upstate Case Management, Inc., Troy, NY
 Urban Dynamics Institute, Inc.,
 Waterbury, CT
 Valley Community Development
 Corporation, Belleville, NJ
 Valley Forge Citizens for Deer Control,
 Wayne, PA
 Vennell Tavern Committee, Inc.,
 Pennsauken, NJ
 Veterans for Integrity in Government,
 Inc., Centreville, VA

Victory Community Development Corporation, Perth Amboy, NJ
Vietnam Veterans of Central New York Foundation, Liverpool, NY
Vietnamese Franciscan Association of America, Huntington, Beach, CA
Vietnamese National Institute of Administration Alumni Association, Falls Church, VA
Village Housing Development Corp., New York, NY
Villages of Glanlita, Inc., Cincinnati, OH
Vinnie Debarros Memorial Boxing Club, Inc., Waterbury, CT
Violence Intervention & Prevention, Salisbury, MD
Virginia Citizens League, Norfolk, VA
Virginia Foster Care Association, Inc., Culpeper, VA
Virginias House, Inc., Union, NJ
Vision of Hope Community Services, York, PA
Visionary Institute for Healthcare Policy and Studies, Jensen Beach, FL
W. J. Logan Community Center, Union, NJ
Wake Up Justice Corporation, New York, NY
Wall Track Club, Spring Lake, NJ
West Essex High School Student Scholarship Fund, Inc., North Caldwell, NJ
West Martinsburg Scottish-Irish Arts Society, Inc., Lowville, NY
Westmont Lions Club Foundation, Inc., Westmont, NJ
Whitaker Goodnews, Inc., Newport News, VA
Winslow Township Creative Playground, Inc., Cedar Brook, NJ

Women of Destiny, Norwalk, CT
Youth Ice Hockey Association of Fair Lawn, Inc., Fair Lawn, NJ
Youth Time Services International, Inc., Buffalo, NY
Yuba City Youth Football and Cheer, Yuba City, CA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2004-18

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

Generally, the Service will not disallow deductions for contributions made to a

listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on November 5, 2001, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Championship Drivers Association
Benevolence Fund
Indianapolis, IN
Children's Express Foundation, Inc.
Washington, DC

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.