

Office of Chief Counsel
Internal Revenue Service
Memorandum

Release Number: 20133303F

Release Date: 8/16/2013

CC:SB:5:SLC:

POSTF-153168-12

Via Email

date: April 22, 2013

to:

ITAP, CTA West Manager

from:

Associate Area Counsel ()
(Small Business/Self-Employed)

subject: Application of Section 6702 Penalty to Taxpayer Who Files a Return with War Complaint

This memorandum responds to your request for advice regarding the application of the section 6702 penalty for frivolous tax submissions.

Background:

A taxpayer timely filed an income tax return listing all items of income and applicable deductions and credits. The taxpayer correctly calculated the tax due, but did not make a payment with the return. Instead, the taxpayer enclosed a letter describing a conscientious objection to the full payment of Federal income tax.

As a member of the Religious Society of Friends (Quakers), the taxpayer opposes war and the support of war. The taxpayer enclosed a letter with her return explaining this position. In the letter, the taxpayer recited statistics to claim that a certain percentage of Federal income tax dollars supports the military. The taxpayer then used this percentage to calculate the amount of tax she is willing to pay; she "withheld" payment of the rest of the tax due.

Issues:

1. Does assessment of the section 6702 penalty against a taxpayer who presents a frivolous "conscientious objection" violate any constitutional provision or amendment?

2. Should the IRS assess a section 6702 penalty against a taxpayer who presents a frivolous “conscientious objection” in a letter enclosed with a complete and correct income tax return?

Conclusions:

1. No. A taxpayer does not have the right to reduce Federal income taxes reported on a return based on religious or moral beliefs.
2. No. The section 6702 penalty should not be assessed in this very limited situation. When the taxpayer timely files a correct and complete return, the section 6702 penalty should not be assessed based solely on the fact that the taxpayer enclosed a letter with the return explaining why the taxpayer is not paying the self-assessed tax due. If a penalty has been assessed, it should be abated.

Discussion:

Section 6702(a) generally

Section 6702(a) imposes a \$5,000 penalty on a person if two requirements are met. First, the person files what purports to be a tax return that (A) does not contain information on which the substantial correctness of the self-assessment may be judged or (B) contains information that on its face indicates that the self-assessment is substantially incorrect. *Id.* Second, the information or lack of information the person includes on the return is based (A) on a position which the IRS has identified as frivolous¹ or (B) a position that reflects a desire to delay or impede the administration of Federal tax laws. *Id.*

Conscientious objection arguments

Courts have consistently held as frivolous arguments that a taxpayer does not need to pay the full amount of Federal income tax due based on a “conscientious objection” argument.² Accordingly, the IRS included in its notice of frivolous arguments

¹ See Notice 2010-33, 2010-17 I.R.B. 609 (identifying frivolous positions for purposes of the section 6702 penalty).

² See, e.g., *Bradley v. United States*, 817 F.2d 1400, 1403 (9th Cir. 1987) (“We have repeatedly approved the assessment of a section 6702 penalty for purported tax returns which claim ‘conscience’ or ‘war tax’ deductions.”); *Nelson v. United States*, 796 F.2d 164 (6th Cir. 1986) (upholding the applicability and constitutionality of a frivolous return penalty imposed against a taxpayer who claimed a deduction based on religious objection to war expenditures); *Jenney v. United States*, 755 F.2d 1384, 1387 (9th Cir. 1985) (“There is no provision in the Internal Revenue Code for a war tax deduction or credit, and taxpayers have no constitutional right to refuse to pay federal taxes because of their anti-war sentiments.”); *Randall v. Commissioner*, 733 F.2d 1565, 1567 (11th Cir. 1984) (“[A]rguments involving objections to the Government’s military expenditures as a basis for non-payment of taxes have been raised by taxpayers

the contentions that 1) the First Amendment permits a taxpayer to refuse to pay taxes based on religious or moral beliefs and 2) that the Ninth Amendment exempts those with religious or other objections to military spending from paying taxes to the extent the taxes will be used for military spending.³

Penalizing taxpayers who take these positions on purported returns does not violate the protections afforded by the First Amendment to the United States Constitution, which provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The First Amendment does not provide a right to refuse to pay income taxes on religious or moral grounds or because taxes are used to fund government programs opposed by the taxpayer.⁴

Section 6702 inapplicable in limited circumstances

If a taxpayer submits a document with a frivolous argument to the IRS, a penalty under section 6702(a) will apply only if the taxpayer files a purported tax return that either does not contain information on which the substantial correctness of the self-assessment may be judged or contains information that on its face indicates that the self-assessment is substantially incorrect. I.R.C. § 6702(a)(1).⁵ As explained in legislative history, “the penalty could be imposed against any individual filing a ‘return’

many times, and in each instance the courts have rejected them.”).

³ Notice 2010-33, 2010-17 I.R.B. 609, Section III(9)(a) and (g); *see also* Rev. Rul. 2005-20, 2005-14 I.R.B. 821 (“Any argument that taxpayers may refuse to report income or claim deductions because they oppose particular government programs or policies is frivolous and has no merit.”).

⁴ *See, e.g., United States v. Lee*, 455 U.S. 252, 260 (1982) (holding that the broad public interest in maintaining a sound tax system is of such importance that religious beliefs in conflict with the payment of taxes provide no basis for refusing to pay, and stating that “[t]he tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief.”); *Jenkins v. Commissioner*, 483 F.3d 90, 92 (2d Cir. 2007), cert. denied, 552 U.S. 821 (2007) (holding that the collection of tax revenues for expenditures that offended the religious beliefs of individual taxpayers did not violate the Free Exercise Clause of the First Amendment, the Religious Freedom Restoration Act of 1993, or the Ninth Amendment); *Adams v. Commissioner*, 170 F.3d 173, 175-82 (3d Cir. 1999) (holding that the Religious Freedom Restoration Act did not require that the federal income tax accommodate Adams’ religious beliefs that payment of taxes to fund the military is against the will of God, and finding that her beliefs did not constitute reasonable cause for purposes of the penalties); *United States v. Ramsey*, 992 F.2d 831, 833 (8th Cir. 1993) (rejecting Ramsey’s argument that filing federal income tax returns and paying federal income taxes violates his pacifist religious beliefs and stating that Ramsey “has no First Amendment right to avoid federal income taxes on religious grounds.”); *Wall v. United States*, 756 F.2d 52 (8th Cir. 1985) (upholding the imposition of a \$500 frivolous return penalty against Wall for taking a “war tax deduction” on his federal income tax return based on his religious convictions and stating the “necessities of revenue collection through a sound tax system raise governmental interests sufficiently compelling to outweigh the free exercise rights of those who find the tax objectionable on bona fide religious grounds.”).

⁵ “The penalty will be imposed only when the frivolous position or desire to delay or impede the administration of Federal tax laws appears on the face of the return, purported return, or specified submission, including any attachments to the return or submission.” Notice 2010-33, 2010-17 I.R.B. 609.

showing an incorrect tax due or a reduced tax due, because of the individual's claim of a clearly unallowable deduction, such as . . . a 'war tax' deduction under which the taxpayer reduces his taxable income or shows a reduced tax due by that individual's estimate of the amount of his taxes going to the Defense Department budget, etc. *In contrast, the penalty will not apply if the taxpayer shows the correct tax due but refuses to pay the tax.*" S. Rep. No. 97-494, 97th Cong., 2d Sess. 277-78, reprinted in 1982 U.S. Code Cong. & Ad. News. 781, 1024 (emphasis added).

The section 6702 penalty should not be assessed against a taxpayer who encloses with, or attaches to, an otherwise accurate and complete tax return documents articulating frivolous arguments. Congress did not intend for the section 6702 penalty to apply in this limited circumstance. In such circumstances, the return does not contain information insufficient to determine the substantial correctness of the self-assessment, or indicate that the self-assessment is substantially incorrect. Instead, the attachments state the grounds upon which the taxpayer is refusing to pay the properly reported tax. While the section 6702 penalty may not be assessed in these circumstances, other penalties or additions to tax may be assessed against the taxpayer. See, e.g., I.R.C. § 6651(a)(2) (failure to timely pay tax due).

If, however, a taxpayer claims on the return that he is entitled to a deduction or credit based on a conscientious objection or other frivolous argument, then the section 6702 penalty should be assessed. Similarly, if a taxpayer claims a refund of income taxes withheld in an incorrect amount based on a conscientious objection, the section 6702 penalty should be assessed. "Taxpayers may not refuse to file tax returns and may not claim deductions or credits on their tax returns based on their opposition to government programs or policies." Rev. Rul. 2005-20, 2005-14 I.R.B. 821.

Please call _____ if you have any further questions.

 Attorney (_____)
 (Small Business/Self-Employed)

Approved:

 Associate Area Counsel (_____)
 (Small Business/Self-Employed)

 Date