

26 CFR 601.05: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

Rev. Proc. 2001-41

SECTION 1. PURPOSE

.01 This revenue procedure modifies Rev. Proc. 2001-2 (2001-1 I.R.B. 79) to clarify that Technical Advice will not be issued on frivolous issues and to provide a procedure for expedited review of denials of Technical Advice where the taxpayer requests Technical Advice on frivolous issues.

SECTION 2. MODIFICATIONS

.01 Section 3 of Rev. Proc. 2001-2, On What Issues May Technical Advice be Requested Under This Procedure, is mod-

ified by the addition of subsection .03 below, which provides that technical advice will not be issued on frivolous issues.

Technical advice will not be issued on frivolous issues. For purposes of this program, a “frivolous issue” is one without basis in fact or law, or that espouses a position which has been held by the courts to be frivolous or groundless. Examples of frivolous or groundless issues include, but are not limited to:

1. frivolous “constitutional” claims, such as claims that the requirement to file tax returns and pay taxes constitutes an unreasonable search barred by the Fourth Amendment; violates Fifth and Fourteenth Amendment protections of due process; violates Thirteenth

Amendment protections against involuntary servitude; or is unenforceable because the Sixteenth Amendment does not authorize nonapportioned direct taxes or was never ratified;

2. claims that income taxes are voluntary, that the term “income” is not defined in the Internal Revenue Code, or that preparation and filing of income tax returns violates the Paperwork Reduction Act;

3. claims that tax may be imposed only on coins minted under a gold or silver standard or that receipt of Federal Reserve Notes does not cause an accretion to wealth;

4. claims that a person is not taxable on income because he or she falls within a class entitled to “repa-

ration claims” or an extra-statutory class of individuals exempt from tax, *e.g.*, “free-born” individuals;

5. claims that a taxpayer can refuse to pay taxes on the basis of opposition to certain governmental expenditures;

6. claims that taxes apply only to federal employees; only to residents of Puerto Rico, Guam, the U.S. Virgin Islands, the District of Columbia, or “federal enclaves”; or that the Internal Revenue Code imposes taxes on U.S. citizens and residents only on income derived from foreign based activities;

7. claims that wages or personal service income are not “income,” are “nontaxable receipts,” or “are a nontaxable exchange for labor;” or

8. other claims the courts have characterized as frivolous or groundless.

.02 Section 11 of Rev. Proc. 2001–2, How Does a Taxpayer Appeal a Director’s or Area Director, Appeals’, Decision not to Seek Technical Advice, is modified by adding subsection .05 below, which provides for expedited review procedures where the denial of technical advice is because the requested advice concerns frivolous issues.

Special procedures applicable to appeals regarding frivolous issues. If the request for technical advice concerns a “frivolous issue,” as described in Section 3.03 of this Revenue Procedure, technical advice will not be given, and the examining officer or appeals officer will deny the taxpayer’s request for referral. The taxpayer may appeal the decision of the examining officer or the appeals officer; however, if the territory manager or area director, appeals, determines that no technical advice will be sought, an expedited review procedure will be followed.

This expedited review procedure will consist of the following: 1) the territory manager or area director, appeals, will inform the appropriate official described in section 11.04 above (the Industry Director, LMSB; the Director, Field Compliance, SB/SE; the Director, Compliance, W&I; the Director, International, LMSB; the Director, Federal, State, and Local Governments; the Director, Tax Exempt Bonds; the Director, Indian Tribal Governments; or the Chief, Appeals) of the request for review and the basis for the denial, but will not forward the taxpayer’s written re-

quest and statements, unless requested to do so by the official; 2) the field office or area office will not suspend action on the issue; 3) within 15 days, the official will notify the territory manager or area director, appeals, whether the proposed denial is approved or disapproved. The official may also determine that the expedited process is not warranted and request all of the information supplied by the taxpayer and allow suspension of action on the item while the denial is reviewed; and 4) the field office or area office will then notify the taxpayer of the result of the review of the denial.

SECTION 3. EFFECTIVE DATE

This revenue procedure is effective July 23, 2001, the date this revenue procedure was released to the news media.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is George Bowden of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Mr. Bowden at 202-622-3400 (not a toll-free call).