

Section 6662.—Imposition of Accuracy-Related Penalty on Underpayments

(Also Section 6664.)

Frivolous tax returns; use of “straw man” to avoid tax. This ruling emphasizes to taxpayers and to promoters and return preparers that a taxpayer cannot avoid income tax on the erroneous theory that the government has created a separate and distinct entity or “straw man,” in place of the taxpayer and that the taxpayer is not responsible for the tax obligations of the “straw man”. This argument has no merit and is frivolous.

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PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by taking the incorrect position that their incomes are not subject to tax based on a theory that the government has created a separate and distinct entity, or “straw man,” in place of the taxpayer and that the taxpayer is not responsible for the tax obligations of the “straw man.” Some promoters market a package, kit, or other materials that claim to show taxpayers how they can avoid paying income taxes based on these and other meritless arguments.

This revenue ruling emphasizes to taxpayers and to promoters and return preparers that a taxpayer cannot avoid income tax on the erroneous theory that the government has created a “straw man.” 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, including frivolous positions based on meritless “straw man” or similar arguments. 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 these activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

ISSUE

Whether the government’s use of different forms of a taxpayer’s name (*e.g.*, different capitalization formats, spellings) creates a “straw man,” which is a separate and distinct legal entity from the taxpayer to allow the taxpayer to avoid federal tax obligations?

DISCUSSION OF THE “STRAW MAN” CLAIM

The “straw man” claim is premised on the erroneous theory that most government documents do not actually refer to individuals. Users of the “straw man” theory falsely claim that only documents using an individual’s name with “standard” capitalization, *i.e.*, lower-case with only the beginning letters of each name capitalized, are legitimate. These individuals erroneously argue that the use of the individual’s name in all upper-case letters, which is common in some government documents, refers to a separate legal entity, called a “straw man.” These individuals also erroneously argue that, as a result of the creation of a “straw man,”

they are not liable for the debts, including the tax debts, of their “straw man,” that taxing the “straw man” is illegal because the “straw man” is a debt instrument based upon the labor of a real person and is, therefore, a form of slavery, or that no tax is owed by the real individual because it can be satisfied, or offset, by money in a “Treasury Direct Account” held in the name of the “straw man.”

All individuals are subject to the provisions of the Internal Revenue Code. Section 1 imposes a tax on all taxable income. Section 61 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, the accompanying Treasury regulations, 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 filed in accordance with Treasury regulations and IRS forms. Section 6012 identifies the persons who are required to file income tax returns. Section 6151 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.

There is no authority under the Internal Revenue Code or any other applicable law that supports the claim that taxpayers may avoid their federal tax obligations based on “straw man” arguments, as described in this revenue ruling, or on similar arguments. The formatting of a taxpayer’s name in all upper-case letters on government documents or elsewhere has no significance whatsoever for federal tax purposes. Courts have rejected as frivolous “straw man” arguments. *United States v. Furman*, 168 F.Supp.2d 609 (E.D. La. 2001) (rejecting criminal defendant’s contention that he was not properly identified in federal government documents that misspelled his name or used his properly spelled name in all capital letters). In addition, courts repeatedly have rejected similar arguments based on frivolous claims that purport to provide a basis for avoiding taxes, and have penalized taxpayers who have made these arguments. *See, e.g., Lovell v. United States*, 755 F.2d 517, 519

(7th Cir. 1984) (“[A]ll individuals, natural or unnatural, must pay federal income tax on their wages”); *United States v. Romero*, 640 F.2d 1014, 1017 (9th Cir. 1981) (“[I]n our system of government, one is free to speak out in open opposition to the provisions of the tax laws, but such opposition does not relieve a citizen of his obligation to pay taxes.”).

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, and will disallow deductions or other claimed tax benefits, including the exclusion of income, based on frivolous “straw man” arguments. In addition to liability for the tax due plus statutory interest, individuals who claim tax benefits on their returns, or fail to file returns, based on these and other frivolous arguments face substantial civil and criminal penalties. 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 relying on these theories also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201, for which there is a significant fine and imprisonment for up to 5 years; (2) willful failure to file a return under section 7203, for which there is a significant fine and imprisonment for up to one year; or (3) making false statements on a return, statement, or other document under section 7206, for which there is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these theories and those who assist taxpayers in claiming tax benefits based on these frivolous arguments may face penalties and also may be enjoined by courts pursuant to sections 7407 and

7408. Potential penalties include: (1) a \$250 penalty under section 6694 for each return or claim for refund 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 or claim for refund if the return preparer’s actions were willful, intentional or reckless); (2) a penalty under section 6700 for promoting abusive tax shelters; (3) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which there is a significant fine and imprisonment for up to 3 years for assisting or advising about the preparation of a false return, statement or other document under the internal revenue laws.

HOLDING

The use of different forms of a taxpayer’s name (different spellings, capitalization, etc.) does not create a “straw man” that allows taxpayers to avoid their federal tax obligations. Claims based on “straw man” arguments or on similar arguments, to avoid federal tax obligations, are frivolous and have no merit.

DRAFTING INFORMATION

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