

Part I

Sections 6012, 6651, 6673

Rev. Rul. 2006-17

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by filing a return or submitting documents to the Service with the phrase “nunc pro tunc” written or stamped on the face of the return or document, and asserting that the phrase has some legal effect. The Service is also aware that some promoters, including return preparers, are advising or recommending that taxpayers take this frivolous position. Some promoters market 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, promoters, and return preparers that inserting the phrase “nunc pro tunc” on a return or other document submitted to the Service has no legal effect and does not validate an invalid return, make a delinquent return timely, invalidate a signature, create a claim for refund of taxes previously paid, or reduce one’s federal tax liability. Any argument that the inclusion of the phrase “nunc pro tunc” on a return or other document submitted to the Service has any legal effect has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their federal 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 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 or 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 an 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 inclusion of the phrase "nunc pro tunc" on a return or other document filed with the Service has any legal effect.

FACTS

Some taxpayers file returns or other documents with the Service that have the phrase "nunc pro tunc" stamped or written on the face of the return or document. These taxpayers assert that the phrase "nunc pro tunc" has some legal effect in reducing, eliminating, or altering in some way their federal income tax liability or other obligations under the tax laws.

LAW AND ANALYSIS

The phrase “nunc pro tunc,” a Latin phrase translated as “now for then,” denotes that an act has retroactive legal effect through a court’s inherent power. Black’s Law Dictionary 1097 (8th ed. 2004). When a document is signed “nunc pro tunc” as of a specified date, it means that a thing is now done which should have been done on the specified date. 56 Am. Jur. 2d Motions, Rules, and Orders § 58, at 45 (2000).

The term “nunc pro tunc” also describes a later record entry of a previous action that is intended to have effect as of the date of the action itself. Black’s Law Dictionary 1097. The inclusion of the phrase “nunc pro tunc” on the face of the return form or in other documents submitted to the Service has no legal effect, and does not validate an invalid return, make an untimely return timely, invalidate a signature, create a claim for refund of taxes previously paid, or reduce one’s federal tax liability.

To the extent taxpayers are attempting to validate an otherwise invalid return by writing or stamping the phrase “nunc pro tunc” on the face of a return or in attached documents, this phrase has no validating effect. For a document to qualify as a valid return, it must contain sufficient data to calculate tax liability, it must purport to be a return, there must be an honest and reasonable attempt to satisfy the requirements of the tax law, and the taxpayer must execute the return under penalties of perjury. Beard v. Commissioner, 82 T.C. 766 (1984), aff’d, 793 F.2d 139 (6th Cir. 1986). The inclusion of the phrase “nunc pro tunc” on the face of the return form or in the attachments does not provide any further information sufficient to calculate tax liability, or to satisfy any

other requirements of the tax law. Accordingly, it does not validate an otherwise invalid return.

HOLDING

Inclusion of the phrase “nunc pro tunc” on a return or other document submitted to the Service has no legal effect and is therefore frivolous.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liability. In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on the argument that the inclusion of the phrase “nunc pro tunc” on the face of their return or other document submitted to the Service has some legal effect, face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of tax 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 imposed under section 6702 when the taxpayer files a document that purports to be a return but that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of Federal income tax laws; (4) 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; 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 frivolous positions also may face criminal prosecution under: (1) section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203 for willful failure to file a return under section 7203, the penalty for which is a significant fine and imprisonment for up to a year; and (3) section 7206 for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years; and (4) any other penalties pursuant to applicable provisions of federal law.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on frivolous positions may face civil and criminal penalties and also may be enjoined by a court 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 position 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 the penalty is a significant fine 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.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of the 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).