

# Internal Revenue Bulletin: 2010-17

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## Notice 2010-33

### *Frivolous Positions*

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#### ***I. Purpose***

Positions that are the same as or similar to the positions listed in this notice are identified as frivolous for purposes of the penalty for a “frivolous tax return” under section 6702(a) of the Internal Revenue Code and the penalty for a “specified frivolous submission” under section 6702(b). Persons who file a purported return of tax, including an original or amended return, based on one or more of these positions are subject to a penalty of \$5,000 if the purported return of tax does not contain information on which the substantial correctness of the self-assessed determination of tax may be judged or contains information that on its face indicates the self-assessed determination of tax is substantially incorrect. Likewise, persons who submit a “specified submission” (namely, a request for a collection due process hearing or an application for an installment agreement, offer-in-compromise, or taxpayer assistance order) based on one or more of the positions listed in this notice are subject to a penalty of \$5,000. The penalty may also be applied if the purported return or any portion of the specified submission is not based on a position set forth in this notice, yet reflects a desire to delay or impede the administration of Federal tax laws for purposes of section 6702(a)(2)(B) or 6702(b)(2)(A)(ii). 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.

#### ***II. Background***

Section 407 of Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922, 2960-62 (2006), amended section 6702 to increase the amount of the penalty for frivolous tax returns from \$500 to \$5,000 and to impose a penalty of \$5,000 on any person who submits a “specified frivolous submission.” A submission is a “specified frivolous submission” if it is a “specified submission” (defined in section 6702(b)(2)(B) as a request for a hearing under section 6320 or 6330 or an application under section 6159, 7122 or 7811) and any portion of the submission (i) is based on a position identified by the Secretary as frivolous or (ii) reflects a desire to delay or impede administration of the Federal tax laws. Section 6702 was further amended to add a new subsection (c) requiring the Secretary to prescribe, and periodically revise, a list of positions identified as frivolous. Notice 2007-30, 2007-1 C.B. 883, contained the prescribed list. Notice 2007-30 was modified and superseded by Notice 2008-14, 2008-1 C.B. 310, which added frivolous positions to the prescribed list. This notice revises the

list in Notice 2008-14 to add additional positions identified as frivolous. The positions that have been added are found in paragraphs 21, 22, and 27.

### **III. Discussion**

Positions that are the same as or similar to the following are frivolous.

(1) Compliance with the internal revenue laws is voluntary or optional and not required by law, including arguments that:

(a) Filing a Federal tax or information return or paying tax is purely voluntary under the law, or similar arguments described as frivolous in Rev. Rul. 2007-20, 2007-1 C.B. 863.

(b) Nothing in the Internal Revenue Code imposes a requirement to file a return or pay tax, or that a person is not required to file a tax return or pay a tax unless the Internal Revenue Service responds to the person's questions, correspondence, or a request to identify a provision in the Code requiring the filing of a return or the payment of tax.

(c) There is no legal requirement to file a Federal income tax return because the instructions to Forms 1040, 1040A, or 1040EZ or the Treasury regulations associated with the filing of the forms do not display an OMB control number as required by the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*, or similar arguments described as frivolous in Rev. Rul. 2006-21, 2006-1 C.B. 745.

(d) Because filing a tax return is not required by law, the Service must prepare a return for a taxpayer who does not file one in order to assess and collect tax.

(e) A taxpayer has an option under the law to file a document or set of documents in lieu of a return or elect to file a tax return reporting zero taxable income and zero tax liability even if the taxpayer received taxable income during the taxable period for which the return is filed, or similar arguments described as frivolous in Rev. Rul. 2004-34, 2004-1 C.B. 619.

(f) An employer is not legally obligated to withhold income or employment taxes on employees' wages.

(g) Only persons who have contracted with the government by applying for a governmental privilege or benefit, such as holding a Social Security number, are subject to tax, and those who have contracted with the government may choose to revoke the contract at will.

(h) A taxpayer may lawfully decline to pay taxes if the taxpayer disagrees with the government's use of tax revenues, or similar arguments described as frivolous in Rev. Rul. 2005-20, 2005-1 C.B. 821.

(i) An administrative summons issued by the Service is *per se* invalid and compliance with a summons is not legally required.

(2) The Internal Revenue Code is not law (or "positive law") or its provisions are ineffective or inoperative, including the sections imposing an income tax or requiring the filing of tax returns, because the provisions have not been implemented by regulations even though the provisions in question either (a) do not expressly require the Secretary to issue implementing regulations to become effective or (b) expressly require implementing regulations which have been issued.

(3) A taxpayer's income is excluded from taxation when the taxpayer rejects or renounces United States citizenship because the taxpayer is a citizen exclusively of a State (sometimes characterized as a "natural-born

citizen” of a “sovereign state”), that is claimed to be a separate country or otherwise not subject to the laws of the United States. This position includes the argument that the United States does not include all or a part of the physical territory of the 50 States and instead consists of only places such as the District of Columbia, Commonwealths and Territories (*e.g.*, Puerto Rico), and Federal enclaves (*e.g.*, Native American reservations and military installations), or similar arguments described as frivolous in Rev. Rul. 2004-28, 2004-1 C.B. 624, or Rev. Rul. 2007-22, 2007-1 C.B. 866.

(4) Wages, tips, and other compensation received for the performance of personal services are not taxable income or are offset by an equivalent deduction for the personal services rendered, including an argument that a taxpayer has a “claim of right” to exclude the cost or value of the taxpayer’s labor from income or that taxpayers have a basis in their labor equal to the fair market value of the wages they receive, or similar arguments described as frivolous in Rev. Rul. 2004-29, 2004-1 C.B. 627, or Rev. Rul. 2007-19, 2007-1 C.B. 843.

(5) United States citizens and residents are not subject to tax on their wages or other income derived from sources within the United States, as only foreign-based income or income received by nonresident aliens and foreign corporations from sources within the United States is taxable, and similar arguments described as frivolous in Rev. Rul. 2004-30, 2004-1 C.B. 622.

(6) A taxpayer has been untaxed, detaxed, or removed or redeemed from the Federal tax system though the taxpayer remains a United States citizen or resident, or similar arguments described as frivolous in Rev. Rul. 2004-31, 2004-1 C.B. 617.

(7) Only certain types of taxpayers are subject to income and employment taxes, such as employees of the Federal government, corporations, nonresident aliens, or residents of the District of Columbia or the Federal territories, or similar arguments described as frivolous in Rev. Rul. 2006-18, 2006-1 C.B. 743.

(8) Only certain types of income are taxable, for example, income that results from the sale of alcohol, tobacco, or firearms or from transactions or activities that take place in interstate commerce.

(9) Federal income taxes are unconstitutional or a taxpayer has a constitutional right not to comply with the Federal tax laws for one of the following reasons:

(a) The First Amendment permits a taxpayer to refuse to pay taxes based on religious or moral beliefs.

(b) A taxpayer may withhold payment of taxes or the filing of a tax return until the Service or other government entity responds to a First Amendment petition for redress of grievances.

(c) Mandatory compliance with, or enforcement of, the tax laws invades a taxpayer’s right to privacy under the Fourth Amendment.

(d) The requirement to file a tax return is an unreasonable search and seizure contrary to the Fourth Amendment.

(e) Income taxation, tax withholding, or the assessment or collection of tax is a “taking” of property without due process of law or just compensation in violation of the Fifth Amendment.

(f) The Fifth Amendment privilege against self-incrimination grants taxpayers the right not to file returns or the right to withhold all financial information from the Service.

(g) 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.

(h) Mandatory or compelled compliance with the internal revenue laws is a form of involuntary servitude prohibited by the Thirteenth Amendment.

(i) Individuals may not be taxed unless they are “citizens” within the meaning of the Fourteenth Amendment.

(j) The Sixteenth Amendment was not ratified, has no effect, contradicts the Constitution as originally ratified, lacks an enabling clause, or does not authorize a non-apportioned, direct income tax.

(k) Taxation of income attributed to a trust, which is a form of contract, violates the constitutional prohibition against impairment of contracts.

(l) Similar constitutional arguments described as frivolous in Rev. Rul. 2005-19, 2005-1 C.B. 819.

(10) A taxpayer is not a “person” within the meaning of section 7701(a)(14) or other provisions of the Internal Revenue Code, or similar arguments described as frivolous in Rev. Rul. 2007-22, 2007-1 C.B. 866.

(11) Only fiduciaries are taxpayers, or only persons with a fiduciary relationship to the United States are obligated to pay taxes, and the United States or the Service must prove the fiduciary status or relationship.

(12) Federal Reserve Notes are not taxable income when paid to a taxpayer because they are not gold or silver and may not be redeemed for gold or silver.

(13) In a transaction using gold and silver coins, the value of the coins is excluded from income or the amount realized in the transaction is the face value of the coins and not their fair market value for purposes of determining taxable income.

(14) A taxpayer who is employed on board a ship that provides meals at no cost to the taxpayer as part of the employment may claim a so-called “Mariner’s Tax Deduction” (or the like) allowing the taxpayer to deduct from gross income the cost of the meals as an employee business expense.

(15) A taxpayer may purport to operate a home-based business as a basis to deduct as business expenses the taxpayer’s personal expenses or the costs of maintaining the taxpayer’s household when the maintenance items or amounts as reported do not correspond to a *bona fide* home business, such as when they are grossly excessive in relation to the conceivable costs for some portion of the home being used exclusively and regularly as a business, or similar arguments described as frivolous by Rev. Rul. 2004-32, 2004-1 C.B. 621.

(16) A “reparations” tax credit exists, including arguments that African-American taxpayers may claim a tax credit on their Federal income tax returns as reparations for slavery or other historical mistreatment, that Native Americans are entitled to an analogous credit (or are exempt from Federal income tax on the basis of a treaty), or similar arguments described as frivolous in Rev. Rul. 2004-33, 2004-1 C.B. 628, or Rev. Rul. 2006-20, 2006-1 C.B. 746.

(17) A Native American or other taxpayer who is not an employer engaged in a trade or business may nevertheless claim (for example, in an amount exceeding all reported income) the Indian Employment Credit under section 45A, which explicitly requires, among other criteria, that the taxpayer be an employer engaged in a trade or business to claim the credit.

(18) A taxpayer's wages are excluded from Social Security taxes if the taxpayer waives the right to receive Social Security benefits, or a taxpayer is entitled to a refund of, or may claim a charitable-contribution deduction for, the Social Security taxes that the taxpayer has paid, or similar arguments described as frivolous in Rev. Rul. 2005-17, 2005-1 C.B. 823.

(19) Taxpayers may reduce or eliminate their Federal tax liability by altering a tax return, including striking out the penalty-of-perjury declaration, or attaching documents to the return, such as a disclaimer of liability, or similar arguments described as frivolous in Rev. Rul. 2005-18, 2005-1 C.B. 817.

(20) A taxpayer is not obligated to pay income tax because the government has created an entity separate and distinct from the taxpayer—a “straw man”—that is distinguishable from the taxpayer by some variation of the taxpayer's name, and any tax obligations are exclusively those of the “straw man,” or similar arguments described as frivolous in Rev. Rul. 2005-21, 2005-1 C.B. 822.

(21) A taxpayer may use a Form 1099-OID, *Original Issue Discount*, (or another Form 1099 Series information return) as a financial or other instrument to obtain or redeem (under a theory of “redemption” or “commercial redemption”) a monetary payment out of the United States Treasury or for a refund of tax, such as by drawing on a “straw man” or similar financial account maintained by the government in the taxpayer's name (see paragraph (20), above); a taxpayer may file a Form 56, *Notice Concerning Fiduciary Relationship*, that names the Secretary of the Treasury or some other government employee as a fiduciary of the taxpayer and requires the Treasury Department to honor a Form 1099-OID as a financial or redemption instrument; or similar arguments described as frivolous in Rev. Rul. 2005-21, 2005-1 C.B. 822, and Rev. Rul. 2004-31, 2004-1 C.B. 617.

(22) A taxpayer may claim on an income tax return or purported return an amount of withheld income tax or other tax that is obviously false because it exceeds the taxpayer's income as reported on the return or is disproportionately high in comparison with the income reported on the return or information on supporting documents filed with the return (such as Form 1099 Series, Form W-2, or Form 2439, *Notice to Shareholder of Undistributed Long-Term Capital Gains*).

(23) Inserting the phrase “nunc pro tunc” on a return or other document filed with or submitted to the Service has a legal effect, such as reducing a taxpayer's tax liability, or similar arguments described as frivolous in Rev. Rul. 2006-17, 2006-1 C.B. 748.

(24) A taxpayer may avoid tax on income by attributing the income to a trust, including the argument that a taxpayer can put all of the taxpayer's assets into a trust to avoid income tax while still retaining substantial powers of ownership and control over those assets or that a taxpayer may claim an expense deduction for the income attributed to a trust, or similar arguments described as frivolous in Rev. Rul. 2006-19, 2006-1 C.B. 749.

(25) A taxpayer may lawfully avoid income tax by sending income offshore, including depositing income into a foreign bank account.

(26) A taxpayer can claim the section 44 Disabled Access Credit to reduce tax or generate a refund, for example, by purportedly having purchased equipment or services for an inflated price (which may or may not have been actually paid), even though it is apparent that the taxpayer did not operate a small business that purchased the equipment or services to comply with the requirements of the Americans with Disabilities Act.

(27) A taxpayer may claim a refund of tax based on purported advance payments to employees of the Earned Income Tax Credit as reported by the taxpayer on a filed Form 941, *Employer's Quarterly Federal Tax Return*, or other employment tax return that reports an amount of purported wages, tips, or other compensation but leaves other line items on the return blank (or with a zero as the amount)..

(28) A taxpayer may claim the section 6421 fuels tax credit (such as on Form 4136, *Credit for Federal Tax Paid on Fuels*; Form 8849, *Claim for Refund of Excise Taxes*; or Form 1040) even though the taxpayer did not buy the gasoline or the gasoline was not used for an off-highway business use during the period for which the credit is claimed. Also, if the taxpayer claims an amount of credit that is so disproportionately excessive to any (including zero) business income reported on the taxpayer's income tax return as to be patently unallowable (e.g., a credit that is 150 percent of business income reported on Form 1040) or facially reflects an impossible quantity of gasoline given the business use, if any, as reported by the taxpayer.

(29) A taxpayer is allowed to buy or sell the right to claim a child as a qualifying child for purposes of the Earned Income Tax Credit.

(30) An IRS Form 23C, *Assessment Certificate — Summary Record of Assessments*, is an invalid record of assessment for purposes of section 6203 and Treas. Reg. § 301.6203-1, the Form 23C must be personally signed by the Secretary of the Treasury for an assessment to be valid, the Service must provide a copy of the Form 23C to a taxpayer if requested before taking collection action, or similar arguments described as frivolous in Rev. Rul. 2007-21, 2007-1 C.B. 865.

(31) A tax assessment is invalid because the assessment was made from a section 6020(b) substitute for return, which is not a valid return.

(32) A statutory notice of deficiency is invalid because the taxpayer to whom the notice was sent did not file an income tax return reporting the deficiency or because the statutory notice of deficiency was unsigned or not signed by the Secretary of the Treasury or by someone with delegated authority.

(33) A Notice of Federal Tax Lien is invalid because it is not signed by a particular official (such as by the Secretary of the Treasury), or because it was filed by someone without delegated authority.

(34) The form or content of a Notice of Federal Tax Lien is controlled by or subject to a state or local law, and a Notice of Federal Tax Lien that does not comply in form or content with a state or local law is invalid.

(35) A collection due process notice under section 6320 or 6330 is invalid if it is not signed by the Secretary of the Treasury or other particular official, or if no certificate of assessment is attached.

(36) Verification under section 6330 that the requirements of any applicable law or administrative procedure have been met may only be based on one or more particular forms or documents (which must be in a certain format), such as a summary record of assessment, or that the particular forms or documents or the ones on which verification was actually determined must be provided to a taxpayer at a collection due process hearing.

(37) A Notice and Demand is invalid because it was not signed, was not on the correct form (e.g., a Form 17), or was not accompanied by a certificate of assessment when mailed.

(38) The United States Tax Court is an illegitimate court or does not, for any purported constitutional or other reason, have the authority to hear and decide matters within its jurisdiction.

(39) Federal courts may not enforce the internal revenue laws because their jurisdiction is limited to admiralty or maritime cases or issues.

(40) Revenue Officers are not authorized to issue levies or Notices of Federal Tax Lien or to seize property in satisfaction of unpaid taxes.

(41) A Service employee lacks the authority to carry out the employee's duties because the employee does not possess a certain type of identification or credential, for example, a pocket commission or a badge, or it is not in the correct form or on the right medium.

(42) A person may represent a taxpayer before the Service or in court proceedings even if the person does not have a power of attorney from the taxpayer, has not been enrolled to practice before the Service, or has not been admitted to practice before the court.

(43) A civil action to collect unpaid taxes or penalties must be personally authorized by the Secretary of the Treasury and the Attorney General.

(44) A taxpayer's income is not taxable if the taxpayer assigns or attributes the income to a religious organization (a "corporation sole" or ministerial trust) claimed to be tax-exempt under section 501(c)(3), or similar arguments described as frivolous in Rev. Rul. 2004-27, 2004-1 C.B. 625.

(45) The Service is not an agency of the United States government but rather a private-sector corporation or an agency of a State or Territory without authority to administer the internal revenue laws.

(46) Any position described as frivolous in any revenue ruling or other published guidance in existence when the return adopting the position is filed with or the specified submission adopting the position is submitted to the Service.

Returns or submissions that contain positions not listed above, which on their face have no basis for validity in existing law, or which have been deemed frivolous in a published opinion of the United States Tax Court or other court of competent jurisdiction, may be determined to reflect a desire to delay or impede the administration of Federal tax laws and thereby subject to the \$5,000 penalty.

The list of frivolous positions above will be periodically revised as required by section 6702(c).

#### ***IV. Effective Date***

This notice is effective for submissions made and issues raised after April 7, 2010. For submissions made and issues raised between January 14, 2008 and April 7, 2010, Notice 2008-14 applies.

#### ***V. Effect on Other Documents***

Notice 2008-14 is modified and superseded.

#### ***VI. Drafting Information***

The principal author of this notice is Emily M. Lesniak, Office of the Associate Chief Counsel, Procedure and Administration. For further information, contact Emily M. Lesniak at 202-622-4940 (not a toll-free number).