

Part I – 1986 Code

Section 6662. – Imposition of Accuracy Penalty; Section 6663 – Imposition of Fraud Penalty; Section 6702 – Frivolous Return Penalty

Rev. Rul. 2004-33

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by taking the position that they are entitled to a “reparations tax credit” or other similarly named credit because they are a member of a group or class based on race, ancestry, ethnicity, gender or other classification. Common examples of the purported reparations tax credit that have been promoted include the African-American reparations credit, the Black Heritage tax credit, and the Native American reparations credit. The Service also is aware that promoters, including return preparers, are advising or recommending that taxpayers take frivolous positions based on this argument. Some promoters may be marketing a package, kit, or other materials that claim to show taxpayers how they can receive large refunds based on this claim, or how taxpayers can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, and to promoters and return preparers who assist taxpayers with these schemes, that there is no reparations tax credit that entitles an individual to a refund of tax or to any other tax benefit, such as a credit against tax liability. This position is frivolous and has no merit. Although the Internal Revenue Code does allow special tax treatment for charitable organizations described in section 501(c)(3) that may help individuals who are needy or otherwise distressed and who are part of a general class of charitable beneficiaries, there is no U.S. law that allows for a reparations tax credit.

The Service is committed to identifying taxpayers who attempt to avoid paying income tax by taking frivolous positions, such as claiming a reparations tax credit. 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 such activities. Other information about frivolous tax positions is available on the Service website at www.irs.gov.

DISCUSSION OF REPARATIONS TAX CREDIT SCHEME

Participants in the reparations tax credit scheme typically file individual income tax returns that correctly report the taxpayers' income, tax liability, and income tax withholding, but claim reparations tax credits in amounts that typically exceed their tax liabilities to reduce taxes that otherwise are owed and request refunds of purported overpayments of withheld taxes or excess refundable credits. Participants often claim the reparations tax credit either on Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, identifying a fictitious regulated investment company or real estate investment trust, or as a withholding credit, Earned Income Credit, investment tax credit or another similar credit.

No law, including the Internal Revenue Code, allows taxpayers to claim a reparations tax credit or any other similarly-named credit. Courts repeatedly have rejected reparations tax credit claims as frivolous and penalized taxpayers making these claims and promoters and return preparers who assist taxpayer in making these frivolous claims. See, e.g., United States v. Bridges, 86 A.F.T.R.2d (RIA) 5280 (4th Cir. 2000) (rejecting as frivolous the non-existent "Black Tax Credit" and upholding conviction for aiding and assisting the preparation of false tax returns); United States v. Haugabook, 2002 U.S. Dist. LEXIS 25314 (M.D. Ga. 2002) (ordering a permanent injunction against a promoter prohibiting the preparation of returns or other documents claiming a tax credit for slavery reparations or other similar frivolous credits and requiring that the promoter place an advertisement in the local newspaper declaring that there are no such tax credits); United States v. Mims, 2002 U.S. Dist. LEXIS 25291 (S.D. Ga. 2002) (ordering a permanent injunction against a promoter prohibiting the preparation of returns or other documents claiming a tax credit for slavery reparations or other similar frivolous credits); United States v. Foster, 2002-2 U.S.T.C. (CCH) ¶ 50,785 (E.D. Va. 2002) (holding "no provision of the Internal Revenue Code allows for a tax credit for slavery reparations" and ordering a permanent injunction prohibiting the preparation of returns or refund claims based on a "fabricated tax credit for slavery reparations").

CIVIL AND CRIMINAL PENALTIES

The Service will disallow credits or refunds based on a reparations tax credit and will seek to recover any refund erroneously made to a taxpayer based on a reparations tax credit. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on this and other frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalty, which is equal to 20 percent of the amount of taxes 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 under section 6702 for filing a frivolous return; and (4) 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 this scheme also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 5 years; or (2) making false statements on a return under section 7206 for which the penalty is a fine of up to \$100,000 and imprisonment for up to 3 years.

Persons who promote this scheme and those who assist taxpayers in claiming tax benefits based on this scheme also may face penalties. Potential penalties include: (1) a \$250 penalty for each return 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 where the return preparer's actions were willful, intentional or reckless); (2) a \$1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (3) criminal prosecution under section 7206 for which the penalty is a fine of up to \$100,000 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. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

HOLDING

Any claim that a taxpayer is entitled to a reparations tax credit or a refund or other tax benefit based on a reparations tax credit is frivolous. Taxpayers attempting to reduce their federal tax liability by taking frivolous positions based on this argument will be liable for the actual tax due plus statutory interest. In addition, the Service will determine civil penalties against taxpayers where appropriate, and those taxpayers may also face criminal prosecution. The Service also will determine appropriate civil penalties against persons who prepare frivolous returns or promote frivolous positions, and those persons may also face criminal prosecution. Promoters and others who assist taxpayers in engaging in these schemes also may be enjoined from doing so under section 7408.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office on (202) 622-7800 (not a toll-free call).