

Part I

Section 6011(a)—General Requirement of Return, Statement, or List

26 CFR 1.6011-1(a): General requirement of return, statement, or list
(Also: §§ 6012(a), 6020(b), 6072(a), 6151)

Rev. Rul. 2007-20

PURPOSE

The Internal Revenue Service (Service) is aware that some taxpayers assert that compliance with the internal revenue laws is purely voluntary, specifically, that they are not required to file federal tax returns or pay federal tax because the filing of a tax return or the payment of tax is a matter of choice. Taxpayers who take this position argue that the Form 1040 Series instructions provide that filing a return and paying tax are voluntary and not mandatory. Often quoting from the Supreme Court's opinion in Flora v. United States, 362 U.S. 145, 176 (1960), they claim that "[o]ur system of taxation is based upon voluntary assessment and payment, not upon distraint." Some of these taxpayers also contend that section 6020(b) of the Internal Revenue Code requires the Service to prepare a federal tax return for any person who does not file a return, which, according to these taxpayers, means that they are not required to file a return.

This revenue ruling emphasizes to taxpayers, promoters, and return preparers that the requirements to file a tax return and pay the tax that is due are not optional. Any position to the contrary 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 determines whether taxpayers who have taken frivolous positions have filed all 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 filing a tax return or paying tax is voluntary.

FACTS

Taxpayer A claims that he is not required to file a federal income tax return or pay income taxes because filing a return and paying tax are "voluntary" activities that he

can legitimately opt not to do. Taxpayer A further claims that if a tax return is required, the Service must prepare it for the taxpayer.

LAW AND ANALYSIS

Effective tax administration relies on taxpayers willingly complying with the tax laws, but taxpayers do not have the right to choose whether the laws apply to them. References to a “voluntary” tax system in Flora, supra, and in Service publications, mean a system that allows taxpayers to determine, in the first instance, the correct amount of their tax and to report their liability on appropriate returns, rather than having the government make the determinations for them. See Hibbs v. Winn, 542 U.S. 88, 100 n.3 (2004) (“[T]he taxpayer, not the taxing authority, is the first party to make the relevant calculation of income taxes owed.”) (Emphasis added). “Voluntary” in this context does not mean that taxpayers may opt out of the system. As stated in United States v. Schiff, 876 F.2d 272, 275 (2d Cir. 1989):

To the extent that income taxes are said to be “voluntary,” . . . they are only voluntary in that one files the returns and pays the taxes without the IRS first telling each individual the amount due and then forcing payment of that amount. The payment of income taxes is not optional, however, . . . and the average citizen knows that the payment of income taxes is legally required.

See also United States v. Middleton, 246 F.3d 825, 840-41 (6th Cir. 2001); United States v. Raymond, 228 F.3d 804, 812-13 (7th Cir. 2000); United States v. Gerads, 999 F.2d 1255, 1256 (8th Cir. 1993); Wilcox v. Commissioner, 848

F.2d 1007, 1008 (9th Cir. 1988); United States v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986); Moore v. Commissioner, 722 F.2d 193, 196 (5th Cir. 1984); Woods v. Commissioner, 91 T.C. 88, 90 (1988).

Any suggestion that taxpayers may elect not to file returns or pay tax ignores the laws that affirmatively and unambiguously establish these requirements. Specifically, the requirement to pay income taxes is clearly established in section 1 of the Internal Revenue Code, which imposes a tax on the taxable income of individuals, estates, and trusts as determined by the tables set forth in that section, and section 11, which imposes a tax on the taxable income of corporations. The requirement to file an income tax return is explicitly stated in sections 6011(a), 6012(a), and 6072(a) and corresponding Treasury Regulations. In addition, section 6151 requires taxpayers to submit payment of their taxes with their tax returns. Under these provisions of the Code, any taxpayer who has received more than a statutorily determined amount of gross income during the tax year is required to file a return for the year and pay tax on the income.

Underscoring the fallacy of any position that filing a tax return or paying tax is voluntary is the existence of civil and criminal penalties for failing to file or pay. See Helvering v. Mitchell, 303 U.S. 391, 399 (1938) (“In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts . . . [on an] annual return [backed up by] . . . sanctions [that] may . . . be either criminal or civil.”) If, as some taxpayers claim, reporting and paying taxes were optional, penalties for noncompliance would not exist and would not be routinely imposed and upheld.

Section 6651(a) imposes an addition to tax for failure to file a required tax return or pay tax unless the failure is due to reasonable cause and not willful neglect. Section 7203 imposes a criminal penalty (in addition to the civil penalty) for willfully failing to file a return or pay tax.

Finally, the Service is not obligated to make returns for taxpayers who fail to do so. Section 6020(b) merely provides the Service with a mechanism for determining the tax liability of a taxpayer who has not filed a return. Section 6020(b) does not require the Service to prepare a tax return in any case, and it does not excuse a taxpayer from the requirements to file and pay or from liability for unpaid taxes, plus civil and criminal penalties for the failure to file or pay.

HOLDING(S)

Taxpayer A must file income tax returns if the income threshold is met and must pay the correct amount of income taxes owed. Compliance with the internal revenue laws, including filing tax returns and paying tax, is not optional. Further, the Service's authority to prepare a return under section 6020(b) does not relieve a taxpayer of the obligation to file a tax return or pay tax. Any claim by Taxpayer A that one may lawfully opt not to file a return or pay tax is frivolous.

The Service will challenge the claims of individuals who improperly attempt to avoid or evade their federal tax liability.

CIVIL AND CRIMINAL PENALTIES

The position described above—that the law permits a taxpayer to choose not to file an income tax return or pay income taxes because these acts are voluntary—is a frivolous position for purposes of section 6702(c). The Service will challenge the claims of individuals who attempt to improperly 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 taxes, 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 tax the taxpayer should have paid; (3) the section 6702(a) penalty of \$5,000 for filing a document that purports to be a return and that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of federal tax laws; (4) the section 6702(b) penalty of \$5,000 for submitting a “specified frivolous submission”; (5) 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; (6) the section 6673 penalty of up to \$25,000 if the taxpayer makes frivolous arguments in the United States Tax Court; and (7) the section 6682 penalty of \$500 for providing false information with respect to withholding.

Taxpayers relying on this frivolous position 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, the penalty for which is a significant fine and imprisonment for up to a year;

(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) other federal laws as applicable.

Persons, including return preparers, who promote this frivolous position 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; (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years, for assisting with or advising on the preparation of a false return, statement, or other document under the internal revenue laws; and (5) other federal laws as applicable.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure & 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).