

Part I – 1986 Code

Sections 6662, 6663, 6673, and 6702

Rev. Rul. 2005-17

PURPOSE

The Service is aware that some taxpayers are filing claims for refund of the Social Security taxes paid on wages pursuant to the Federal Insurance Contributions Act (FICA) on the basis that they have waived their right to receive Social Security benefits. The Service also is aware that some taxpayers are attempting to reduce or eliminate their federal tax liability by taking similar frivolous return positions, including reporting as a charitable contribution deduction the amount of Social Security taxes paid, on the basis that they are donating these amounts to the government. Some promoters market a package, kit, or other materials, that claim to show taxpayers how they can obtain a refund or avoid paying income taxes based on these and other meritless arguments. This revenue ruling does not apply to individuals who have satisfied the requirements of the religious exemption from FICA provided in section 3127 of the Internal Revenue Code.

This revenue ruling emphasizes to taxpayers and to promoters and return preparers that there is no right to a refund of, or a deduction for, Social Security taxes paid based on arguments that a taxpayer has waived the right to receive Social

Security benefits or has donated Social Security taxes or benefits to the government. These arguments have no merit and are frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their tax obligations by taking frivolous positions, including frivolous positions based on arguments regarding waiver of Social Security benefits. 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's website at www.irs.gov.

ISSUES

1. Whether taxpayers are entitled to a refund of Social Security taxes paid on the theory that they have waived the right to receive Social Security benefits?
2. Whether taxpayers are entitled to a charitable contribution deduction for Social Security taxes paid on the theory that those amounts have been donated by them to the government?

FACTS

This plan includes claims for refund of Social Security taxes paid on wages under FICA, on the theory that the taxpayer has waived the right to receive Social Security benefits. Additionally, some taxpayers claim a charitable contribution deduction on the theory that they have donated their Social Security taxes, or their right to receive Social Security benefits, to the government.

LAW AND ANALYSIS

Social Security taxes are imposed on wages as defined in section 3121. There is no authority under the Internal Revenue Code (other than the narrow exception to the application of FICA tax provided in the religious exemption under section 3127) or any other applicable law that supports the claim that taxpayers may waive their right to receive Social Security benefits and thereby receive a refund of Social Security taxes paid. Similarly, there is no provision of law that would allow a taxpayer to claim a charitable contribution deduction as a result of the donation or gift to the government of the taxpayer's right to receive Social Security benefits or of Social Security taxes paid.

In Crouch v. Commissioner, T.C. Memo. 1990-309, the taxpayers did not pay self-employment tax based on a claim that they had withdrawn from the Social Security system. The taxpayers also claimed a charitable contribution deduction based on a purported lump-sum gift to the government of Social Security benefits. The Tax Court rejected these positions, characterizing the taxpayers' failure to pay self-employment tax as negligent and sustaining the Service's disallowance of the charitable contribution deduction. See also Derksen v. Commissioner, 84 T.C. 355, 360 (1985) ("There are

some specific exemptions from the [social security] tax but the desire not to be a part of the social security system, standing alone, is not one of them.”)

A refund claim must be based on a valid argument that the taxpayer has overpaid the tax that is lawfully due and owing. See, e.g., Lewis v. Reynolds, 284 U.S. 281, 283 (1932) (“[T]he taxpayer is not entitled to a refund unless he has overpaid his tax.”). Further, it is a well settled principle of law that deductions and credits are a matter of legislative grace. See INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934). Unless specifically provided for in the Internal Revenue Code, no deduction or credit is allowed. Neither section 3121, nor any other provision of the Internal Revenue Code, allows for a refund of Social Security taxes paid on the grounds that a taxpayer has purportedly waived all rights to receive Social Security benefits. Similarly, no provision of the Internal Revenue Code allows for a charitable contribution deduction based on the purported gift or donation of Social Security taxes or benefits to the government.

CIVIL AND CRIMINAL PENALTIES

The Service will disallow any claim for refund of Social Security taxes based on the frivolous argument that a taxpayer has waived the right to receive Social Security benefits. The Service will also disallow any deduction that is based on the theory that a taxpayer has given or donated the taxpayer’s Social Security taxes or Social Security benefits to the government. In addition to liability for tax due plus statutory interest, individuals who claim tax benefits on their returns based on these and similar frivolous arguments face substantial civil and criminal penalties. Potentially applicable civil

penalties include, but are not limited to the following: (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 income tax 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 these frivolous positions also may face criminal prosecution for: (1) attempting to evade or defeat tax under section 7201, for which the penalty is a significant fine and imprisonment for up to 5 years; or (2) making false statements on a return, statement, or other document under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on these frivolous positions also may face penalties and 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, statement, or other document under the internal revenue laws.

HOLDING

Taxpayers are not entitled to a refund of the Social Security taxes paid based on the position that they have waived the right to receive Social Security benefits.

Moreover, a taxpayer is not entitled to a charitable contribution deduction based on the purported gift or donation of Social Security taxes or benefits to the government.

Claims or deductions based on these positions are frivolous and have no merit.

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) 622-7950 (not a toll-free call).