

REV. RUL. 2006-20 , I.R.B. 2006-15, MARCH 16, 2006.

[Code Secs. 1 and 61]

Frivolous arguments: Native Americans: Native American Treaty. — Any return position based on the idea that a Native American may be exempt from federal income tax under an unspecified “Native American Treaty” has no merit and is frivolous. Native Americans are generally subject to federal income tax unless an exemption is explicitly created by a treaty or a statute. The IRS also points out that, under the Indian Gaming Regulatory Act, any distribution of casino gaming proceeds to individual tribe members is specifically subject to income tax. Any exemptions are expressly stated in the language of a particular treaty; when claiming such an exemption, an individual must be a member of a particular tribe having such a treaty and must cite that specific treaty. Back references: ¶3100.10, ¶3290.0262 and ¶5504.185.

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by claiming tax exempt status based on a general “Native American Treaty.” The Service is also aware that some promoters, including return preparers, are advising or recommending that Native American taxpayers take the frivolous position that they are exempt from federal income tax based on an unspecified Native American treaty. Some promoters market a package, kit or other materials that claim to show taxpayers how they can avoid paying income taxes based on these and other meritless arguments.

This revenue ruling emphasizes to taxpayers, promoters, and return preparers that there is no right to exemption from federal income tax for Native Americans under an unspecified “Native American Treaty.” Any return position based on an unspecified “Native American Treaty” has no merit and is frivolous. As a general rule, Native Americans are subject to federal income tax just like every other American.

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 taxpayers may avoid their federal income tax liability by claiming tax exempt status based on an unspecified “Native American Treaty.”

FACTS

Taxpayer A is a Native American and receives income from a tribal or non-tribal source. The income paid to taxpayer A is reported on an information return (e.g., a Form 1099-MISC, Form W-2. etc.). Taxpayer A then either: 1) fails to report the income shown on the information return on his federal income tax return, claiming an erroneous exemption from federal income tax under an unspecified “Native American Treaty,” or 2) wrongly reports a loss offsetting the information return income on the “Other Income” line of his federal income tax return with an explanation that reads, “Less - Native American Treaty” or “Native American Treaty.”

LAW AND ANALYSIS

Native Americans are subject to the same income tax laws as other U.S. citizens unless there is an exemption explicitly created by treaty or statute. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956); *Estate of Poletti v. Commissioner*, 99 T.C. 554, 557-58 (1992), *aff'd*, 34 F.3d 742 (9th Cir. 1994); *Doxtator v. Commissioner*, T.C. Memo. 2005-113. Any exemption must be based on clear and unambiguous treaty or statutory language. *Squire*, 351 U.S. at 6; *Ramsey v. United States*, 302 F.3d 1074 (9th Cir. 2002); *Cook v. United States*, 86 F.3d 1095 (Fed. Cir. 1996); *Estate of Peterson v. Commissioner*, 90 T.C. 249, 250 (1988). Under the Internal Revenue Code, all individuals, including Native Americans, are subject to federal income tax. Section 1 imposes a tax on all taxable income. Section 61 provides that gross income includes all income from whatever source derived. Adjustments to income, deductions, and credits must be claimed in accordance with the provisions of the Internal Revenue Code and accompanying Treasury regulations. Although there are certain exemptions and other provisions throughout the Internal Revenue Code that apply to Native Americans, none of these exempt individual Native American taxpayers from federal tax. Moreover, under the Indian Gaming Regulatory Act, any distribution of casino gaming proceeds to individual tribe members is also subject to federal income tax.

Additionally, while there are numerous valid treaties between various Federally Recognized Indian Tribal Governments and the United States government, some of which may contain language providing for narrowly defined tax exemptions, these treaties have limited application to specific tribes. Any exemptions from federal tax are expressly stated in the language of the treaty. Taxpayers who are affected by such treaty language must be a member of a particular tribe having a treaty and must cite that specific treaty in claiming any exemption. There is no general treaty that is applicable to all Native Americans.

HOLDING

Taxpayer A made improper and unfounded claims for exemption from federal income tax by either failing to report his income or reporting it and claiming an offsetting deduction. Any claim that a taxpayer is exempt from federal income tax due to a general "Native American Treaty" is frivolous. Unless a taxpayer can cite a specific treaty or statutory language providing for exemption of income from federal income tax, that taxpayer is subject to all applicable federal income tax laws. Thus, Taxpayer A must report the income shown on the information return and may not report a loss or exemption attributable to a general Native American treaty to offset the income received from the tribal organization.

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 they are exempt from income tax due to a general "Native American Treaty" 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 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 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, the penalty for which is a significant fine and imprisonment for up to 1 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.

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 of up to \$1,000 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, resulting in 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.

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 at (202) 622-7800 (not a toll-free call).