

[Code Sec. 6012]

Frivolous argument: Form 1040: Paperwork Reduction Act. — Individuals may not reduce their federal income tax liability by claiming that they are not required to file an income tax return because of the Paperwork Reduction Act of 1980 (PRA). Courts have rejected the argument that, because the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget (OMB), and because the regulations and instructions associated with Form 1040 do not have such a number, individuals cannot be penalized for not filing. Courts have pointed out that while the instructions may not have one, Form 1040 does have a control number. Other courts held that the OMB cannot abrogate the duty to file federal income tax returns contained in Code Sec. 6012(a). Back references: ¶3100.10 and ¶35,150.124.

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by contending that they are not required to file an income tax return because of the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812 (codified at 44 U.S.C. §3501, et seq.) (“PRA”). The PRA was enacted, among other reasons, to limit federal agencies’ information requests in order to minimize the paperwork burden for the public. The “public protection” provision of the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget (“OMB”). 44 U.S.C. §3512. Taxpayers who attempt to rely on the PRA contend that they are not required to file a Form 1040, U.S. Individual Income Tax Return, because the instructions and regulations associated with the Form 1040 do not display an OMB control number. The Service is also aware that some promoters, including return preparers, market a package, kit or other materials, advising or recommending that taxpayers take this frivolous position.

This revenue ruling emphasizes to taxpayers, promoters and return preparers that taxpayers are required to file a federal income tax return under section 6012 of the Internal Revenue Code, and the regulations thereunder, and that the PRA does not relieve taxpayers of the duty to file. Any argument that the PRA relieves the taxpayer of the duty to file an income tax return 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 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 obligation to file federal income tax returns based on the PRA.

FACTS

Taxpayer A fails to file a federal income tax return, contending that it is not possible to comply with the filing requirement of Internal Revenue Code section 6012, because the Commissioner has not supplied an information collection request form that complies with the PRA.

LAW AND ANALYSIS

No law allows taxpayers to avoid their obligation under the Internal Revenue Code to file a federal tax return through reliance on the PRA. Courts repeatedly have rejected PRA-based arguments on a number of alternative grounds. Some courts have simply noted that the PRA applies to forms themselves, not to the instructions, and, because the Form 1040 does have a control number, there is no PRA violation. Other courts have held that Congress created the duty to file federal income tax returns in section 6012(a) and “Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress.” *United States v. Neff*, 954 F.2d 698, 699 (11th Cir. 1992); see also *Salberg v. United States*, 969 F.2d 379, 383 (7th Cir. 1992) (affirming conviction for tax evasion and failing to file a return, rejecting claims under the PRA); *United States v. Holden*, 963 F.2d 1114, 1116 (8th Cir. 1992) (affirming conviction for failing to file a return and rejecting argument in favor of acquittal premised

on the fact that tax instruction booklets fail to comply with the PRA); *United States v. Hicks*, 947 F.2d 1356, 1359 (9th Cir. 1991) (affirming conviction for failing to file a return, finding requirement to provide information is required by statute, not by the Service); *Lonsdale v. United States*, 919 F.2d 1440, 1445 (10th Cir. 1990) (finding the PRA inapplicable to “information collection request” forms issued during an investigation of an individual to determine tax liability); *United States v. Wunder*, 919 F.2d 34, 37 (6th Cir. 1990) (rejecting claim of a PRA violation and affirming conviction for failing to file a return).

HOLDING

Taxpayers are required to file a federal income tax return under section 6012 of the Internal Revenue Code. The PRA does not relieve taxpayers of the duty to file, and any argument to the contrary has no merit and is frivolous.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liabilities. In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on frivolous PRA-based arguments 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 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 frivolous positions involving the PRA 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; 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, 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.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622-7950 (not a toll-free call).