



IRS Nationwide

TaxForum | 2021

Advocating for Taxpayers in Order to Avoid Abusive Tax Schemes
Wednesday, July 21st, 2021

Start Time: 11:00am Eastern / 10:00am Central
9:00am Mountain / 8:00am Pacific

Note: You should be hearing music while waiting for webinar to start.

Having Technical Issues?

View the “Technical Issues” troubleshooting guide in the Materials drop-down menu on the left side of this page



Today our webinar will help you:

- Recognize and avoid abusive tax schemes;
- Know about recent schemes;
- Identify and deconstruct a common scheme;
- Understand how a scheme impacts taxpayers who participate in a scheme; and
- Understand the tax consequences and penalties associated with abusive schemes



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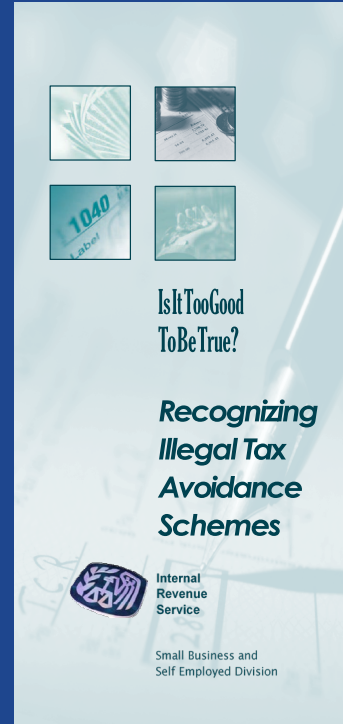
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Recognizing Illegal Tax Avoidance Schemes

- Publication 3995
- (Rev. 8-2003)



Is it too good to be true?

- “I Can Get You a Big Refund...for a Fee!”
- “So New, Your Tax Professional Doesn’t Even Know About It.”
- “I Don’t Pay Taxes - Why Should You?”



Characteristics of Abusive Promotions

- False Statements
- Misuse of IRC sections
- Sham arrangements
- Gross valuation overstatements



Abusive **Promoter** Characteristics

- Delivers a polished presentation
- Can be an individual or a group.
- Will receive a commission or payment from you or your investment.



Return Preparer Schemes

Dirty Dozen list of tax scams include

- Ghost Preparers
- Offer in Compromise Mills
- EIP or Refund Theft
- Senior Fraud

Scams Targeting Tax Professionals

- IRS warns tax pros of new scam posing as professional associations.
- Tax professionals warned of e-Services scam.
- A phishing scheme mimicking software providers targets tax professionals.
- Bogus email asks tax professionals to update their IRS e-services portal information and Electronic Filing Identification Numbers (EFINs).



IRC § 179D Energy Efficient Commercial Buildings Deduction

- Governmental entity can allocate the deduction to the designer of the energy efficiency property.
- Abuses in:
 - Who is a qualified designer
 - Improper allocations/overstated deductions
 - Incorrect certifications
- U.S. v. Quebe 123 AFTR 2d 2019-543 (SD OH 2019)

Syndicated Conservation Easements

- A pass-through entity contributes a conservation easement to a tax-exempt entity and allocates a charitable contribution deduction to its investors.
- Promotional materials offer prospective investors a charitable contribution deduction of some multiple of the investor's investment.
- Promoters obtain an appraisal that greatly inflates the value of the conservation easement.



Abusive IRA and Roth IRA

- Prohibited transactions with an IRA under IRC § 4975
- Excess contributions to a Roth IRA

Deconstructed Scheme: Micro-Captive Insurance Company

- Several authorized promoter investigations
- Captive – form of self-insurance whereby the captive insurer is owned directly or indirectly by the insured.



Deconstructed Scheme: Micro-Captive Insurance Company Continued

- Insurance companies with little to no risk
- Notice 2016-66, 2016-47 IRB 745
- Caylor Land & Development v. Commissioner, T.C. Memo. 2021-30 (2021)

Research Tax Credit

- One of the other large abusive schemes
- Abuses in claiming the research tax credit when research is not being done within the scope of IRC § 41 and IRC § 174
- Highly technical issue
- Majority of cases go to Appeals

Research Tax Credit, continued

To qualify:

1. Expenditures must relate to research (IRC § 174 expenses)
2. Must be for the purpose of discovering information that is technological in nature
3. The taxpayer must expect the discovered information will be useful in development of a new or improved business component
4. Substantially all the research activities must constitute a process of experimentation

Participant Penalties

- IRC § 6662A accuracy-related penalty on reportable transaction underpayments, 20% (30% if not adequately disclosed)
- IRC § 6707A for failing to report a reportable transaction, see Notice 2009-59 and IRS.gov
- IRC § 4975(a) penalty for engaging in prohibited transactions with an IRA (15% of amount involved in the transaction, 100% if not corrected in the current tax year)

IRC § 6707A Penalty Amounts

75% of the decrease in tax shown on the return as a result of the reportable transaction, with specific maximum and minimum amounts:

- Listed Transactions

 - Natural person: \$5,000 minimum, \$100,000 maximum

 - All other taxpayers: \$10,000 minimum, \$200,000 maximum

- Other Reportable Transactions

 - Natural person: \$5,000 minimum, \$10,000 maximum

 - All other taxpayers: \$10,000 minimum, \$50,000 maximum



Taxpayer Penalty Relief

The Criteria for Relief From Penalties:

1. Correction of IRS error
2. Statutory and Regulatory exceptions
3. Administrative waivers
4. Reasonable cause



Taxpayer Penalty Relief Reasonable Cause

- IRC § 6662 Accuracy-Related Penalty On Underpayments
- IRC § 6662A
 - Not available where transaction lacks economic substance



Promoter Penalties

- IRC § 6700 – Promoting abusive tax shelters
- IRC § 6701 – Aiding and abetting understatement of tax
- IRC § 6707 – Failure to furnish information regarding reportable transactions
- IRC § 6708 – Failure to maintain lists of advisees with respect to reportable transactions

IRC §§ 6700 and 6701 Penalty Amounts

IRC § 6700

- 50% of the gross income derived (or to be derived) from the activity, for making a false or fraudulent statement about the tax benefits of the transaction
- \$1,000 for each gross valuation overstatement or other conduct, or, if less, 100% of the gross income derived (or to be derived) from the activity

IRC § 6701

- \$1,000 per document per taxable year (or, if there is no tax period, per taxable event) and \$10,000 per document if the document relates to the tax liability of a corporation



Appeal Rights for IRC §§ 6700 and 6701 Penalties

- Post-assessment appeal procedures apply.
- IRC § 6703(c)(1) allows the promoter to pay at least 15% of the amount of the penalty within 30 days and file a claim for refund of the amount paid using Form 6118, Claim for Refund of Tax Return Preparer and Promoter Penalties.

IRC §§ 6707 and 6708 Penalty Amounts

IRC § 6707

- \$50,000 for failing to file a return about a reportable transaction
- For listed transactions, greater of \$200,000 or 50 % of the gross income derived before the return is filed (75% the failure to file was intentional)

IRC § 6708

- \$10,000 for each day, starting with the 21st day, of failure to provide the client information requested by the IRS with no dollar limitation



Appeal Rights for IRC §§ 6707 and IRC 6708 Penalties, continued

- Pre-assessment and post-assessment appeal procedures apply to IRC 6707 penalties.
- Post-assessment appeal procedures apply to IRC 6708 penalties.

Claims for Refund of IRC §§ 6707 and 6708 Penalties

Promoters may not file a refund suit:

1. Before 6 months from the date of filing the claim for refund, unless the IRS acts on the claim, nor
2. After two years from the date of mailing a notice of claim disallowance.