

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: December 10, 2004

to: Marion K. Mortensen
Associate Area Counsel (Salt Lake City)
(Small Business/Self-Employed)
(CC:SB:5:SLC)

from: Ashton P. Trice
Branch Chief, Administrative Provisions & Judicial Practice Division, Branch 2
(Procedure & Administration)
(CC:PA:APJP:B02)

subject: Request for reconsideration of advice on I.R.C. § 6702 and its application to returns by military personnel who claimed a foreign earned income exclusion

This Chief Counsel Advice responds to your request that we reconsider our July 27, 2004 advice concerning the review of your draft opinion relating to returns in which the taxpayer is a member of the United States military and inappropriately claimed a foreign earned income exclusion.

This advice may not be used or cited as precedent.

ISSUE

Whether there is a reasonable cause exception to the imposition of the frivolous return penalty under section 6702.

CONCLUSION

No.

FACTS

Your draft opinion involves certain United States military taxpayers who have inappropriately claimed a refund by using Form 2555 (Foreign Earned Income) to claim a foreign earned income exclusion under section 911. This exclusion allows U.S. taxpayers to exclude foreign earned income from taxation in the United States if the taxpayer earned that income for services performed in a foreign country. The taxpayers returns show that the taxpayers are clearly members of the United States military, and, thus, their income is not foreign earned income; however, these taxpayers claimed a refund of withheld taxes, based on the foreign earned income exclusion. Specifically, you asked us to clarify part of our prior analysis regarding any possible reasonable cause exception under section 6702 in light of some additional factual information that was not previously available to us regarding return preparers that may have been involved in the preparation of these returns.

LAW AND ANALYSIS

We have considered the additional factual information that you provided to us. We agree with your analysis provided in your draft opinion and the request for reconsideration that there is no reasonable cause exception under section 6702. We, therefore, also agree with your proposed handling of this matter.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

There are no hazards or other considerations.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any further questions, please call (202) 622-4940.